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COMMITTEE ON NATURAL RESOURCES
February 23, 2005
LB 351, 658, 191, 731

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 23, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 351, LB 658, LB 191, and LB 731. Senators present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Bob Kremer; LeRoy Louden; Vickie McDonald; and Adrian Smith. Senators absent: None.

SENATOR SCHROCK: I will introduce the people that are with me this afternoon. Not here yet but probably going to be here is Senator LeRoy Louden from Ellsworth; he will be sitting in the chair next to the end. And if a senator isn't present, they may be introducing a bill in another committee or they may be on the phone with a constituent, so. Next to Senator Louden and present is Senator Gail Kopplin from Gretna. And next to Senator Kopplin is Senator Hudkins from Malcolm. And next to me is Jody Gittins; Jody is the committee counsel. And to my immediate left is Senator Elaine Stuhr from Bradshaw; she is vice chair of the committee. Next to Senator Bradshaw (sic) would be Senator McDonald. Senator Bradshaw from Stuhr? Senator Stuhr from Bradshaw, the vice chair of the committee. And wearing the appropriate color today considering the Nebraska victory yesterday; and I've got my Nebraska tie on too, so. Anyway, Senator McDonald is not present yet and she is from St. Paul, by the way of Rockville. And we have Senator Adrian Smith then from Gering. And next to the committee clerk is the honorable Senator Bob Kremer from Aurora, a second-generation senator. And on the far end is Barb Koehlmoos, the committee clerk. We have a page with us today, his name is Eric McCormick. He is a junior at UNL and he is from Grant, Nebraska, studying elementary education. So we're pleased to have Eric with us today. And he waits on us. Just a few instructions. If you want to testify on a bill today, there are sign-in sheets at the corner of the room. Fill them out. If you're going to testify on more than one bill, fill one out for each hearing. If you have a cell phone, please silence it. If you do not wish to testify but would like your name entered into the record, let us know and we will do that. If you have written testimony, hand it to us and we will acknowledge that. I'm asking that you don't read your

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testimony. Underline the highlight parts. We have four bills today. We would like you to keep your testimony to five minutes. If you don't, I will stop you. What else am I missing out? If you need a drink of water or something, the page can help you. We have Senator Preister on board today. First of all, we have it looks like some students here. Do you have a spokesman that can tell us who you are and where you are from?

UNIDENTIFIED STUDENT: Hi. We're from Elkhorn High School.

SENATOR SCHROCK: You're from Oakland High School?

UNIDENTIFIED STUDENT: Elkhorn.

SENATOR SCHROCK: Elkhorn High School. Soon to be a subdivision of Omaha, I understand. (Laughter)

SENATOR KREMER: Oooh.

SENATOR SCHROCK: Oooh. Okay. Well, welcome to the proceedings, and with that we will open the hearing on LB 351, and we have a former member of our committee, Senator Don Preister. Senator Preister, you are authorized to open on LB 351, and we won't put a time limit on you.

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SENATOR PREISTER: (Exhibits 1-7) Thank you, Senator Schrock. Chairman Schrock, members of the Natural Resources Committee, it's a pleasure to be back here with you, and I assume that will be for a good part of today with three bills. My name is Don Preister, P-r-e-i-s-t-e-r, and I am the primary introducer of LB 351, here to open on it today. I bring this bill back before you, as the committee members who have been here for some time recall that I've introduced this on several occasions in the past but have taken a different approach. This bill is intended to amend the Environmental Quality Council, known as the EQC. In my mind, I find this version of it that I bring before you a better balance to the makeup of the council. The previous attempts have been met with opposition from various interests with designated seats on the council. So I'm coming to you in the spirit of compromise with a new

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proposal which changes only one currently designated seat on the council and adds two new members to the council's 16-member body. LB 351 makes a few minor changes to the current membership of the EQC. It adds two new members, a public health environmental health specialist and a biologist. It also exchanges the public at-large member for a representative of minority or low-income persons. The EQC, and I'm going to hand you a chart so you can see the current makeup as well as what I'm proposing. The EQC would grow from a 16-member committee thus, to an 18-member committee. The purpose of the bill is to add members to the council that bring not only a health and science background but refocuses the member of the public representative to include a member from underrepresented members of the population low-income and minority citizens. A September 30, 2004, Lincoln Journal Star article reported that the estimates from the U.S. Census indicate that from the year 2000 through 2003, the state's total population increased about 1.5 percent but minority population grew over 10 percent. The white population grew just three-tenths of a percent during the same time period. The Hispanic population increased over 12 percent and increased in 79 of 93 Nebraska counties. The Asian population increased 23 percent and the African-American population increased 3.6 percent. Given the growing numbers of minorities in Nebraska's population, it makes sense to have them represented on the EQC in order to give them input into how the standards are set for air, water, and siting issues in their communities. It makes even more sense when environmental justice issues are factored in, particularly given the impact of the number, location, and kinds of facilities which are sited in minority and low-income neighborhoods and communities. These changes do not delete any of the current industry-related member seats on the council, but only provide an opportunity for new voices to be heard. I believe this new proposal is a good-faith effort to strike some sort of negotiated compromise in the makeup of the body which sets environmental standards for all Nebraskans. The one handout that I gave you helps to illustrate, I think, the addition and the change, the modification. You can see that eight of the proposed and current seated members are all members of regulated industry. You can also see under that the professional specialist, and the engineer, the labor, and the physician, I believe the current ones are all regulatees. The labor

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representative is a representative of the asbestos workers. The physician, we have nuclear medicine. Nuclear medicine is also regulated by the EQC. If you look under government, also these government entities are also agencies that handle hazardous materials and are also regulatees. So, in effect, virtually all of the council members are regulatees. And is has been my contention that regulatees should be represented, but we should not have an environmental quality council setting environmental standards that is composed almost exclusively of regulatees, that there should be some professional balance. And the two that I have proposed I don't think even come close to any semblance of balance, but at least they provide some technical and professional input to the council. And the one minority low-income representative I think brings a perspective that is especially important, given the fact that many of the hazardous waste sites are located in minority and low-income areas. And I would cite for you that Omaha has the very unfortunate distinction of being the nation's largest residential hazardous waste site in the United States, and that waste site is largely composed of low-income and minority people. This lead-contaminated site is now in the process of being remediated. And we have a lot of people very interested, including some very well-qualified people, who could serve, as well as others, from minority populations or low-income populations that would be able to serve. I would also point out and read into the record the letters that I gave to you in support. One was from the Nebraska Environmental Health Association that you have before you; a second is from the Lead Safe Omaha Coalition; a third is from the Public Health Association of Nebraska; a fourth letter of support is from the American Lung Association of Nebraska; a fifth is from the South Omaha Neighborhood Associations, which is a group of 25 neighborhood associations in this area of Omaha; a sixth letter of support is from Nebraskans for Peace. And in discussing this with the father or grandfather of the EQC, Loran Schmit, he asked me if it would be all right for him to come and testify in support today, and I said that would be fine with me. I don't know if he is going to, but he said to me personally that he was not opposing the proposal that I have this year as he has in the past. With that, Senator Schrock, I would be open to any questions that the committee or you may have.

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SENATOR SCHROCK: Thank you, Senator Preister. I guess once a member of the Natural Resources Committee, always feel like you are member of the Natural Resources Committee.

SENATOR PREISTER: I do.

SENATOR SCHROCK: Questions? Senator Smith.

SENATOR SMITH: The biologist, what qualifications would they have? I don't see a definition in the bill.

SENATOR PREISTER: They would have to have had a degree in biology and be a professional trained biologist.

SENATOR SMITH: A bachelor's degree?

SENATOR PREISTER: They may have more than that, but I think that would be at a minimum.

SENATOR SMITH: Okay. Would there be anyone who would hold themselves out to be a biologist who would not have a bachelor's degree in that specific field?

SENATOR PREISTER: I couldn't say that someone might not do that, but if that needs some qualifying language I'm certainly open to that.

SENATOR SMITH: And then the definition of low-income person?

SENATOR PREISTER: I think that's a requirement with the federal guidelines, federal poverty line guidelines, rather than enacting separate or more difficult to identify guidelines. The federal poverty guidelines would be what I would...

SENATOR SMITH: A hundred percent of poverty or a hundred and...? I mean, because there are varying levels according to various benefits in statute. Is that defined? Perhaps I missed it, but I didn't see if that would be referenced in the bill or not.

SENATOR PREISTER: I can check on that but I thought that that had been referenced, but if it's not, again, we can certainly qualify that and add defining language if need be.

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But that was my intent, to follow the federal guidelines to make it easy.

SENATOR SMITH: Okay. Thank you.

SENATOR SCHROCK: I assume senators qualify as low-income.

SENATOR PREISTER: Senator, at \$12,000 a year, we all do.

SENATOR SCHROCK: Right. That's an old joke...but Senator Stuhr?

SENATOR STUHR: Yes. Senator Preister, could you expand a little bit on that public environmental health professional.

SENATOR PREISTER: Again, Senator Stuhr, that is a profession that's acknowledged, and we do have degrees in that, and a person would have a degree in environmental health and they hopefully would have worked in the field in addition to having their degree. But that person would come before this committee and have to have been appointed by the Governor and then approved by this body. So the guidelines would be their educational requirements and also, hopefully some work in the field before they would even be nominated. But it is a recognized profession and there are standards and classes and qualifications in order to have a degree in that area as well as a biologist.

SENATOR STUHR: Okay, thank you.

SENATOR PREISTER: And the intention there is someone with educational expertise, someone with background in these environmental areas. That's not to say that the current makeup of the body doesn't have some of those, but they are industry representatives, and by nature, an industry representative looks out for the industry. And their first line of approach is for the industry. That's who they are. And I'm not faulting that and I'm not disparaging anyone that is currently on the council.

SENATOR SCHROCK: Other questions? Senator Smith?

SENATOR SMITH: Can you point to a specific decision of the council where these perspectives were lacking?

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SENATOR PREISTER: Probably the biggest one was when we had some folks that were exposed to hydrogen sulfide in Sioux City, and when those folks were repeatedly exposed to the emissions from the tanks there in the area along the river. And, in fact, one lady is...we don't know that we can directly say was a result of not having hydrogen sulfide standard in Nebraska, actually died. This committee heard, year after year, testimony from people there. They brought in the door knobs from their houses that had rusted and corroded and they could show physical results of not having a standard, not having action taken. And finally the Legislature's Natural Resources Committee did put some pressure on the EQC. The EQC, finally after years, set a standard. That's probably the most noticeable one that this committee is most familiar with.

SENATOR SMITH: Were the minority population was specifically harmed? I mean,...

SENATOR PREISTER: There was a large minority population there, as well. It would have been the entire population. But a representative from that low-income minority population on the EQC, I think could have had some more direct input, could have perhaps moved things along sooner and faster than the needless additional exposure by children and others in the area.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Other questions? Senator McDonald.

SENATOR McDONALD: Senator Preister, you're replacing the public at-large. Who generally makes that up? I mean, what type of person would be selected for that by the Governor? Anyone or do they have any criteria or just someone that wants to be on that board?

SENATOR PREISTER: I don't know that there is any real criteria. It says public at-large, and public at-large is whatever the Governor wants to define. I think there's a lot of latitude in all of these. Even in the positions that I'm suggesting, which I hope bring a broader background and experience range to the committee, the Governor still has a lot of leeway in who they appoint, and so the control is still with the Governor and the Legislature to approve them.

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So the guidelines, I think, are what's in the existing statute. And I think it isn't specified.

SENATOR SCHROCK: Other questions? Thank you, Senator Preister, and you'll be around to close because you have to open on the next one.

SENATOR PREISTER: I will be, Senator.

SENATOR SCHROCK: Can I see a show of hands of those who want to testify on this bill? Okay, if you are proponent, how many are a proponent? How many are an opponent? Okay. I think in all fairness, we'll give the proponents 35-40 minutes and the opponents 20 minutes. If you are an opponent, please move to the front of the room and be ready to testify. If you are a proponent please move to the front of the room and be ready to testify. I have letters from Nebraskans for Peace as a proponent signed by Mark Vasina. And I have a letter from the South Omaha Neighborhood Association signed by Mr. Ramos in support. I have a letter from the American Lung Association signed by Mary Peterson in support. I have a letter from the Public Health Association of Nebraska signed by...from Rita Parris in support. I have a letter from Lead Safe Omaha coalition signed by Cheryl Weston in support. and I have a letter from the Environmental Health Association signed by Elizabeth Devney, president of Nebraska Environmental Health Association. And I have comments here from Joan Harbeson in support. So with that, we will take proponent testimony, please. As you come forward and testify, first proponent, please.

WES SHEETS: Good afternoon, Senator Schrock.

SENATOR SCHROCK: And if everybody is going to get their testimony in, that would be about three minutes for testimony and about three minutes for questioning on each of you, take about seven or eight of you.

WES SHEETS: I'll be very brief, Senator and members of the committee.

SENATOR SCHROCK: Thanks, Wes.

WES SHEETS: (Exhibit 8) My name is Wes Sheets and I'm here

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representing the Nebraska division of the Izaak Walton League of America. You spell that...

SENATOR SCHROCK: And spell the name for us.

WES SHEETS: Excuse me.

SENATOR SCHROCK: No problem.

WES SHEETS: The first name is Wes, W-e-s, last name Sheets, S-h-e-e-t-s. I certainly appreciate the opportunity to be here on behalf of the division of the Izaak Walton League and I certainly wish to thank Senator Preister for bringing LB 351 forward. Members of our organization, of course, represent 19 chapters across the state of Nebraska. We've been an association for 81 years now in this state. Our number one goal and mission of the Izaak Walton League, as you all probably remember, is that we don't want to be on the far left or the far right but we like to see the best means possible to take care of our natural resources, including air, water, and woods, and wildlife. I just wanted to express our support and have passed out a letter to that extent. We think this is a very good piece of legislation. It certainly follows in the mission that is stated over the north door of this very building where it says that the salvation of the state is watchfulness in the citizen. We believe the provisions of this bill do, in fact, broaden the scope of the council to permit oversight for all these various natural resources by both the users, the people that need to make a living from these resources, as well as those of us who simply live here and enjoy them. Expanding the number of members on the council would certainly more equally distribute that responsibility for conservation and we think it would be a great thing to do. So with that, I would urge that you please place LB 351 on General File and support its passage. If there are any particular questions, I would be honored to try and answer them.

SENATOR SCHROCK: Thank you, Wes. It's an honor to have you here. First question? Thank you for being here. Next proponent.

TONY PROVOST: Chairman Schrock and members of the committee, I appreciate you taking the time to listen to me.

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I'm a proponent of LB 351. My name is Tony Provost, P-r-o-v-o-s-t, an enrolled member of the Omaha Nation of Nebraska and Iowa. I personally grew up in an area of 80 percent or higher of unemployment, so there are...I don't know if there are levels of poverty, Senator Smith, but to me when I was growing up, when you're poor, you're poor. That's just how it was. And growing up in areas of South Sioux City, Nebraska, and in Omaha, Nebraska, visiting relatives there, they were unfortunately living in low-income housing, and those were the areas that were around the cement mixing places where you have ash and you would have to sweep your house five, six, seven times a day, things of that nature. So I am in support of LB 351 and appreciate your time. That's about all I have to say. Hopefully try to answer any of your questions.

SENATOR SCHROCK: Thank you, Tony. Questions? Tell me again where you grew up.

TONY PROVOST: On the Omaha Indian Reservation, as well as visiting relatives in Omaha, Nebraska, and in South Sioux City, Iowa...I mean Nebraska close to Sioux City, Iowa.

SENATOR SCHROCK: And you say you were close to a cement mixing facility?

TONY PROVOST: Yes. One of my relatives lived by...in the ash from the cement mixing places where they would have to sweep their houses five, six, seven times a day, and I don't think it was very healthy for their upper respiratory system, as well.

SENATOR SCHROCK: But that wasn't in Omaha; that was outside of Omaha.

TONY PROVOST: That was in South Sioux City, Nebraska, sir.

SENATOR SCHROCK: In South Sioux City, Nebraska. Okay.

TONY PROVOST: Yes.

SENATOR SCHROCK: Well, we appreciate you being here today, Tony. Senator Smith.

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SENATOR SMITH: What are the requirements for membership in the tribe?

TONY PROVOST: Requirements for membership in my tribal nation, it is to be one-quarter or blood quantum of Omaha Indian.

SENATOR SMITH: Okay. Thank you.

TONY PROVOST: And also I sit on the Tribal Council for the Omaha Nation.

SENATOR SCHROCK: Other questions for Tony? Thank you for being with us.

TONY PROVOST: Thank you, Senator.

SENATOR SCHROCK: Next proponent.

JUDI MORGAN GAIASHKIBOS: Good afternoon, Mr. Chairman and members of the committee. My name is Judi Morgan galashkibos, and that is spelled J-u-d-i M-o-r-g-a-n g-a-i-a-s-h-k-i-b-o-s. I am the executive director of the Nebraska Commission on Indian Affairs and I am an enrolled member of the Ponca Tribe of Nebraska and am also a Santee Sioux. I rise in support of LB 351 as my former commissioner, Tony Provost, did, and we would like to commend Senator Preister for amending this council. I would like to read a few...I did some research on this. I'm not an expert, per se, in the environmental challenges to minorities, but I do know myself, having grown up in Norfolk, Nebraska, my mother moved from the Ponca Reservation to Norfolk, and we were forced to live in a very sad part of town in Norfolk. It was called Squaw Valley and it was a salvage junkyard, so I sometimes say that I am a junkyard dog kid. And so I guess I grew up in a place that wasn't so safe, but it was owned by a black landlord who had the salvage business, and that was the only place that my mother was able to find affordable housing for my ten brothers and sisters. So I have firsthand experience of living in an environment that wasn't so safe. And on behalf of American Indian people, they have traditionally seen themselves as part of the land and they face numerous environmental problems. While the United States hurtles toward the twenty-first century, the American Indian nations

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within its borders are struggling to maintain the ancient customs and traditions that define their cultures. A cornerstone of these cultures is a deep sense of interconnectedness with the natural environment. The tribes see themselves as being a part of the landscape, as they are dependent upon its natural resources to survive. And yet most American Indian tribes are faced with a number of significant environmental problems. Basic necessities such as safe drinking water and sewage treatment are frequently in short supply. Many reservations are located in remote areas without municipal landfills and it is not uncommon for waste to accumulate to levels that pose an environmental hazard. A number of tribes are located adjacent to hazardous waste sites. Therefore, I think that it is imperative upon the legislative body to make sure that the diverse populations in the state of Nebraska are reflected in the makeup of this council. And that is why I urge you to accept this change of language that Senator Preister has put forward and hope that this will make it to the floor and be adopted. And I would be glad to answer any questions.

SENATOR SCHROCK: Thank you, Judi. And I know you by Judi Morgan. Cabosh (phonetic? How did you say that?

JUDI MORGAN GAIASHKIBOS: Gosh-kee-boss (phonetic). That's Ojibwa, and it means cutter. It could be barber. Senator Chambers said that he could be "Senator gaiashkibos."

SENATOR SCHROCK: Is that something new in your life?

JUDI MORGAN GAIASHKIBOS: Yes. I was married four years ago and so I have added that to my name.

SENATOR SCHROCK: Well, congratulations a little late, but that's all right. Questions for Judi? I'll use your first name. Questions for Judi? Thank you for being with us.

JUDI MORGAN GAIASHKIBOS: Thank you very much.

SENATOR SCHROCK: All right. Next proponent.

CAMELLIA WATKINS: (Exhibit 9) Good afternoon. My name is Camellia Watkins. I am the conservation organizer for the Sierra Club in Omaha.

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SENATOR SCHROCK: Would you spell that for us?

CAMELLIA WATKINS: Watkins is W-a-t-k-i-n-s.

SENATOR SCHROCK: And your first name?

CAMELLIA WATKINS: Camellia, C-a-m-e-l-l-i-a.

SENATOR SCHROCK: Thank you, Camellia.

CAMELLIA WATKINS: First, I would like to thank you all for having us and thank Senator Preister for introducing this bill. The Nebraska Chapter of the Sierra Club supports LB 351. Basically, we support these provisions that require the inclusion of a public health environmental specialist and a biologist because it will add a much needed expertise to the council, in addition to attempting to balance the Environmental Quality Council at this point in time. Also, the Sierra Club believes that the requirement of switching the community at-large person to a person of minority or low-income background is much needed because it's just basically known within the environmental justice areas that the majority of the disposal sites and environmentally questionable facilities are located in areas of low incomes or minority populations. And having worked firsthand with a majority of these communities or coalitions that have sent you letters in today, and also being born and raised in Omaha, Nebraska, in either North and South Omaha, it's a very needed voice that is a strong voice in that community that's not being heard on this council and it's very necessary that we add it into the Environmental Quality Council just so those people have a say and have basically their side of view...their point of view in seen. I'll be happy to answer any questions that you may have.

SENATOR SCHROCK: Thank you, Camellia. Questions? Now, the Governor does appoint someone at-large. Do you know of anybody from the Omaha area that has applied for that position or campaigned for that position or...?

CAMELLIA WATKINS: I do.

SENATOR SCHROCK: Do you? Well, tell us about it.

CAMELLIA WATKINS: The person?

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SENATOR SCHROCK: Yeah. Tell us about your knowledge of someone who has wanted to get the position for the public at-large but hasn't been successful, is this...?

CAMELLIA WATKINS: Oh, of a person that has applied? I do not know of a person that has applied, but I can tell you several people that would know. I think that the problem is, is in these communities that they are not aware of the makeup of these types of councils. And when it's not extended to a person, you're not going to apply for something if you have no idea what it's for and what its purposes are. I think this opens up a great opportunity for people that are already right now in the community immersed in these types of situations to be extended or given a hand to say, hey, your voice is strong; you're working so hard with these people; we need you here at this level, as well.

SENATOR SCHROCK: Do you have firsthand knowledge of the damage done to people from the lead contamination?

CAMELLIA WATKINS: I definitely do. Prior to working...

SENATOR SCHROCK: Could you expound on that a little bit?

CAMELLIA WATKINS: Prior to working with the Sierra Club I was a family advocate for the Headstart program in Omaha, Nebraska, where I actually worked firsthand with children that had lead poisoning. We find that lead poisoning...well, as we know that the Superfund lead site but I don't have time to talk about that...is one of the main problems in eastern Omaha, which is South and North Omaha area. Children are suffering from hyperactivity, ADHD. We're finding that so many children in particularly the North Omaha area are being diagnosed with ADHD and ADD, which can be linked to lead poisoning at an early age. But the problems with lead poisoning is that even though their child may eventually bring that blood lead level down, they will still...the effects of it are long-lasting and never go away. So we have children that were born fine with no learning disabilities, a high IQ, but because of living, just simply living in an area where they were born, they're now having to grow up with this disability of not being able to learn to their greatest capacity, and these are children that were debilitated for life.

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SENATOR SCHROCK: Other questions? Thank you for being with us, Camellia.

CAMELLIA WATKINS: Thank you.

SENATOR SCHROCK: Next proponent?

CECILIA OLIVAREZ HUERTA: Good afternoon, Senator Schrock and members of the committee. My name is Cecilia Olivarez Huerta; it's C-e-c-i-l-i-a O-l-i-v-a-r-e-z H-u-e-r-t-a. And I'm the executive director of the Mexican-American Commission. And I would like to thank Senator Preister for bringing this legislation. I know that he has attempted a couple of times and we've supported his effort. We feel that it's very important that a member of the low-income or minority community be on the membership of the Environmental Quality Council, so I am here in support of LB 351. As the senator indicated, since 1990 the Hispanic population in Nebraska has increased more than 155 percent. It currently is the fastest growing minority population in the state. This growth has been spurred by the availability of jobs in the meatpacking plants. This group of workers and their families are highly affected by environmental issues created by the plants. Minority and low-income persons need to have a place at the table where decisions that affect their lives are being made. Low-income and minority persons must be at the table and have the opportunity to say "not in my backyard." A few years ago a group of Hispanics in Gering, Nebraska, were opposed to the building of an ethanol plant. The location for this plant was on the east outskirts of Gering in an area where the sewage drain pools. The meatpacking plant and the railroad tracks were also located. This seemed like a logical decision. However, this group of Hispanics felt that their needs were not considered. The new ethanol plant was to be located in the lots directly behind their barrio. By directly, I mean the houses with their backyards and then the alley and then the direct lot behind there was where the plant was to be built. This group was worried about the increased traffic and the danger to their children, about the noise and construction and the dirt blowing around and entering their houses, and also how this would affect the elder population who suffered from respiratory and emphysema problems. Another huge impact on the Hispanic community in Scottsbluff occurred when the

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railroad accident caused a chemical spill. Chemicals got into the groundwater and its effects were felt as far as the southeast barrio where Hispanics lived. Two other issues, the pig feedlots and the dumps for radioactive waste, had been discussed at length. My reason for highlighting these four examples to show that environmental issues affect everyone. They are not selective or choose one community or property over another. Membership on the council should be inclusive of the minority and low-income communities to share the decision-making. As a personal note, my family was affected by environmental issues because my father worked in the sugar factory his entire working life. And at an early age he was forced to retire because he had bronchial asthma which was caused by the sugar powder and dust that was in the area of the sugar factory where he worked, so. Anyone have questions?

SENATOR SCHROCK: Questions for Cecilia? Senator Louden.

SENATOR LOUDEN: Yeah, Cecilia, hello. I haven't seen you for quite awhile. Since we are familiar with people out in our end of the area, would there be a problem getting people like that to serve on this committee, because you've had trouble having people from...Latinos and that, to serve on your committee from out west, by some of your lower income where they have to make a trip down here. I've talked to some of the folks out there to get them to serve on your commission, and they said part of the time they just can't afford it. What do you recommend or do you see this as a problem?

CECILIA OLIVAREZ HUERTA: Well, I'm not sure if expenses or anything are covered when people meet on the committee. Do you know that, Senator? Oh, okay. The senator is going to talk about that. But I think it is important. Many times people who are from low-income or minority communities, if they participate in statewide commissions or committees, have to take a day off work. And in most cases, their taking a day from work is not like our taking a day from work because we have vacation leave or our organization supports our being involved with government, things like that. But in most cases where they work, that isn't the case. And so they would either have to go without a day's pay or take a personal day of vacation. So I think that part of it is sometimes what worries people when they would

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like to be on committees. But I think there are people who would like to serve on committees if there were some reimbursement of expenses.

SENATOR LOUDEN: I guess one more question then. Then would these people mostly be from the Lincoln/Omaha area, someplace where it would be very close to drive beings, you know, if it's very far west, it's three days of work they miss; they don't miss just one day of work. That was the problem I ran across trying to get people for the Mexican-American Commission, was it wasn't the day's work, it was the three days' work that they were concerned about.

CECILIA OLIVAREZ HUERTA: Well, hopefully utilizing the new air service that comes from Scottsbluff, if meetings are held during the week when it is convenient, we can fly someone in at night and fly them back out the same day so that they would only miss one day of work, so. I think it's really important that we include people who are from the rest of the state because so many times a lot of the issues affect people in the western part of the state and they're not included in the decision-making, so. It's important that we expand. If I were to have my ultimate wish on this committee, I guess I would like to be sure that all ethnic groups are represented because each one of the ethnic groups have different problems and can't be easily resolved by just one voice. But one voice helps.

SENATOR LOUDEN: Okay, thank you.

CECILIA OLIVERAZ HUERTA: Um-hum.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: You referenced the train derailment in Scottsbluff affecting the minority community. Can you repeat that? This is the first I have heard of this concern.

CECILIA OLIVAREZ HUERTA: Basically, when the train derailed and the chemical spilled, it was at the West 27th Street location. And the chemicals that got into the water table, it all ran down and there were even, in the testing that they did, that there were results that the chemicals had traveled all the way to the East 9th Street barrio in areas

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where most of the Latinos are.

SENATOR SMITH: But they still tested at the point and beyond.

CECILIA OLIVAREZ HUERTA: Right, um-hum.

SENATOR SMITH: And how did you feel that the minority community was shortchanged in that event?

CECILIA OLIVAREZ HUERTA: Oh, I didn't...I didn't mean that they were shortchanged. I just meant that the effects carried all the way down, included the Hispanic community. So that environmental issues or things like that are not selective in just one or two places in the community, that it's an overall effect in the community.

SENATOR SMITH: So that it would affect everyone equally.

CECILIA OLIVAREZ HUERTA: Yes, um-hum.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you.

CECILIA OLIVAREZ HUERTA: Thank you very much.

SENATOR SCHROCK: Appreciate you being with us, Cecilia. Next proponent.

JAREL VINDUSKA: Members of the council, my name is Jarel Vinduska, J-a-r-el V-i-n-d-u-s-k-a.

SENATOR SCHROCK: Thank you, Jarel.

JAREL VINDUSKA: I'm here in support of LB 351 and I think Senator Preister should be commended for his efforts to try to balance out the Environmental Council. I've had a little experience with the Environmental Council over the years, and any efforts that you people can make to make it a more balanced group would be appreciated, especially I don't think this particular time around I don't think by any stretch of the imagination you could say that it's throwing the balance of power too far the other way. I think this is at least a small step forward, but especially on the issue

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of minority participation. Now, I don't necessarily believe that being a minority particularly qualifies you for understanding the scientific nature of what pollution, various types of pollution can do to people, but it gives you...they have a perspective that's unique in that they live with it. Because it's been my experience that pollution always moves toward the place of least resistance, and usually the place of least resistance is in lower income communities, simply because it appears that they are just not used to how to deal with bureaucracies and generally it appears they are also too busy with day-to-day living trying to make a living and surviving that they just had never learned how to get out of situations that they're in. And I can give you a quick example. People have given other examples, but one that was quite shocking to me. If you remember that October snowstorm that hit the Omaha area several years back, quite a few years back now, in October that broke a bunch of tree limbs down, knocked out power. And because of the magnitude of the amount of trees that were needed to be disposed of, they started fires in various spots around Omaha to burn them. And my father suffers from asthma pretty bad, and one of the burn sites was in the Ralston area in Omaha there. And in the fall, in October, there is always lots of temperature inversions and at night, and the smoke would just hang there, and he was really suffering bad from it. So I called the city representatives, and I said, geez, I said you know we have equipment nowadays to mulch trees, why don't we do that instead of burn them because there are a lot of people suffering from this. And couldn't get nowhere with them. So I explained to them the state law is specific that you only burn within a municipality if there is no other means available to dispose of what you're trying to dispose of. And they said, no, this is the cheapest way and we're going to do it this way. So I couldn't stand that answer so I contacted the DEQ and told them that Omaha was in direct violation. Oh, another thing the Omaha representative said is that we manage our own air quality. And I said, well, you've got to still go by state law, and state law is specific on this. Well, anyway, DEQ representatives contacted this guy and explained the situation to him. So the next day he called; he says, okay, you've got your way; we're not going to burn in the Ralston area. And I says, well, where are you going to...what are you going to do, mulch it now? He says, no, we're going to take it up to

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Locust Street up in North Omaha. And I said, why? He says, what do you care; that's for them people to worry about. And so it was just kind of a...and they...for the duration of the time, that's where the trees went and were burnt. And that was just such a shocking example to me that if nobody...if they don't know their way around the law or who to contact, they just were forced to suffer with it. And that's why a person from that community would give perspective and give confidence to those people that they would have somebody that they could talk to and know that somebody was kind of looking out for their interests a little bit. So thanks for your time.

SENATOR SCHROCK: Thank you, Jarel. Wait a minute. Questions? Questions? Senator Kremer.

SENATOR KREMER: Did the Environmental Quality Council have anything to do with the burning of the trees or were they involved in that?

JAREL VINDUSKA: No, they weren't. But I just gave that as an example that if someone from a minority community was on that council, they would set the tone in general for laws because that's who makes laws and regulations. And they would be more inclined to look out for certain groups in the state more.

SENATOR KREMER: Thank you.

SENATOR SCHROCK: Other questions? Thank you for being with us. Next proponent. How many more proponents do we have? I see two hands. We are in good shape, timewise.

DANIELLE NANTKES: (Exhibit 10) Good afternoon, Chairman Schrock, members of the committee. My name is Danielle Nantkes, D-a-n-i-e-l-l-e, last name is Nantkes, N-a-n-t-k-e-s. I'm a staff attorney and registered lobbyist on behalf of the Nebraska Appleseed Center. Initially, we would like to thank Senator Preister for his leadership on this important issue and trying to ensure that members of the low-income and minority communities have a voice in environmental decisions that affect them. We are proud to work with Senator Preister's office and most notably, his trusted and able aide, Kate Allen, and with the Department of Environmental Quality and the federal EPA this fall in

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putting together a two-day forum on environmental justice issues here in Nebraska. I'm passing around some written testimony so to be conscious of time and not repetitive I would just like to point out that this placing specifically in policy and in statute that a member or a representative of minority populations or below-income community is an important policy statement. It will allow the Governor to actively recruit from these specific populations which are generally disproportionately affected by environmental siting decisions and otherwise. Additionally, in my testimony you've heard a lot about environmental justice today. I've included the federal EPA's definition of what environmental justice is. Basically, environmental justice, to be short, is a solution for the problem which is environmental racism. Environmental racism usually manifests itself in three areas: procedural inequity, geographic inequity, and social inequity. This bill really would seek to modify and reform any procedural inequities in the commission most responsible for regulating these matters. With that, I'll allow my written testimony to speak for itself and would be happy to answer any questions.

SENATOR SCHROCK: Thank you, Danielle. Questions? Senator Smith.

SENATOR SMITH: You referenced procedural inequities that currently exist.

DANIELLE NANTKES: Um-hum.

SENATOR SMITH: Can you cite a specific event regarding procedural inequities?

DANIELLE NANTKES: Well, a general example would be stacking boards and commissions with pro-business or regulated industries making decisions about the regulations affecting them. Currently, without a specific place at the table for unique and different perspectives from the affected minority and low-income communities in the current makeup of the board, that could be seen as an example of procedural inequity.

SENATOR SMITH: Okay. So you have affected communities regarding the council. And you're saying that they should always have a voice? I mean...and I agree that they should,

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the regulated communities, because I think that's what the attempt is on the makeup of the council is the affected communities to have a voice. But the flip side of that is they shouldn't be regulating themselves is what I heard you say.

DANIELLE NANTKES: Exactly. And I think this bill really strikes a proper balance, taking into account both of those objectives of the council.

SENATOR SMITH: That the council should be made up of those affected by the communities, but then they shouldn't have a say in the outcome.

DANIELLE NANTKES: No, I think that it's important that both of those major interests are representative, those who are regulated and those who are affected by those regulations disproportionately, which in Nebraska and elsewhere has generally been minority and low-income communities.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions? Senator Stuhr.

SENATOR STUHR: I just wanted to say welcome.

DANIELLE NANTKES: Thank you, so much. Senator Stuhr used to be my senator for a long time. Used to...from Seward originally.

SENATOR SCHROCK: And you moved out of her district?

DANIELLE NANTKES: I'm in Lincoln now.

SENATOR SCHROCK: So who is your senator now?

DANIELLE NANTKES: Senator Schimek.

SENATOR SCHROCK: All right. Thank you, Danielle. Next proponent? And is this the last proponent? How are you, Jim?

JIM KNOPIK: (Exhibits 11-13) Fine, thanks. Good afternoon, Senator Schrock and members of the Ag Committee (sic). My name is Jim Knopik, K-n-o-p-i-k.

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And I have some stuff to hand out, I guess. I'm here in support of LB 351. What I passed out to you there is a...

SENATOR SCHROCK: Did you spell your name for us, Jim?

JIM KNOPIK: Yes, I did.

SENATOR SCHROCK: Okay, I'm sorry.

JIM KNOPIK: The first one was an article that came from the Lincoln Journal Star last June, and the name of it was "Waste lagoons may have leaks." And in there, there looked like there was some research done on about 30 operations in the state that were monitored by the DEQ and were found to be contaminating the groundwater below them. And so the letters were sent out by the DEQ, giving these operations I believe it was until August 30 to supply them with information that the DEQ should have already have in hand. And the kind of information that they were asking for was the same items that they should have had in their operating permit or their permit application to get an operating permit. And I think on the back of the one sheet there I have a list of those 30 operations that were found with contaminants in the groundwater below them. And I didn't mean to cross this out on this letter that they sent out; I meant to highlight it. But just so you don't disregard that. It's showing the contaminants or the constituents that were found in the groundwater with nitrates, ammonia, and chloride. And with that information there, what I'm trying to get across here is 30 of those operations with monitoring wells were found with contaminants in the groundwater. And there is only 94 operations that are monitored in this state with the monitoring wells. And so it shows that we have big problems. And I believe these monitoring wells were put in in '98. And I think the lack of DEQ doing what's right and protecting the groundwater is due to the fact that we only are represented by the industry. My representative on the board is probably one of the larger cattle feeders in the state. He is a co-owner with Jim Pillen and his brother at Wolbach Foods. And I think it really...you know where I stand on that. You know, I'm completely on the other side of the fence and there is no fair representation for small farmers or organic farmers or people that want to eat healthy food and drink clean water, and I'll get into some of that in some later

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testimony on another bill. But I guess that's my main thing here today. And I think this...that what Senator Preister has here still falls short of what we need. The whole system is shot and I can't understand why we just want to fix maybe one wheel and not all 18 of them on this semi. So it just doesn't make a lot of sense. And one other thing, to make it fair so it's a good public agency, I would like to see the senators, all 49 maybe, bring names to the pool and have the senators pick those members instead of the Governor, so I think it gets too politically involved when it's up there. And I think it changes...it helps out a lot because you gather those names and you know the people who would probably make good representatives instead of waiting in the hallway for them to come to you because a lot of them don't even know that an EQC council exists. Thank you.

SENATOR SCHROCK: Thank you, Jim. Senator Smith.

SENATOR SMITH: So are you saying that the decisions are being made that are too political rather than based on science? I mean, I think I hear you saying that the system is worthless, but I don't want to quite go that far.

JIM KNOPIK: I do.

SENATOR SMITH: Okay. So you think it's worthless, but maybe adding a biologist, public environmental health professional, and one representative of minority or low-income population would fix one wheel out of the 18.

JIM KNOPIK: Yeah, yeah. I think so.

SENATOR SMITH: Now, I see that...and I'm speaking to the biologist position and the public environmental health professional, I realize there was public health designation. But when I look at professional engineer and physician I know that they are legally and ethically bound to project unbiased scientific information. Mere designation as a biologist or environmental health professional, I'm not aware...and perhaps they are...but I'm not aware of any legal and ethical requirements for them to be unbiased as to humanly possible. Is that a concern of yours?

JIM KNOPIK: I think there is bias in any member that you would have on there, you know leaning one way or the other.

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But I think you have an ingredient in this industry part that only focuses mostly on bottom line. You know, that's what they focus on first and foremost, and they have...and they're representing people that put a lot of pressure on them to keep that bottom line good. So the tendency is always to allow things to go wrong when you have that kind of pressure, I think.

SENATOR SMITH: Now it looks to me like half...eight out of the 16 if I'm counting accurately, eight out of the 16 are regulated industries. The other eight, conservation, elected officials, public at-large, physician, labor, professional engineer, are otherwise; so half and half. That's not enough?

JIM KNOPIK: I don't think it's half and half. I think half of the last part that you said, the engineers, those still could lean towards the industry side.

SENATOR SMITH: Could.

JIM KNOPIK: Could.

SENATOR SMITH: And anyone could lean, isn't that true?

JIM KNOPIK: Oh, that's for sure. But I think that it's more likely that they would lean towards the industry side than the side of the consumer, because they...I think they have a conflict of interest in some ways in that.

SENATOR SMITH: The engineer, the labor, the physician?

JIM KNOPIK: And so could the physician and those, but probably in things you would never know about or.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions for Jim? Jim, I noticed that five of the feedlot facilities on the back that are listed in here are from Phelps County, which is my county. I know two of them have paid fines for what I think probably my neighbors would consider rather mild infractions that have been corrected and one is still in litigation because he said it's paperwork that's the problem and not anything that was environmentally done wrong. So it's a dilemma.

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JIM KNOPIK: Yeah.

SENATOR SCHROCK: And we have a declining hog population in this state; that's a dilemma. And when I grew up on the farm we had a few sows on the place, but we don't operate that way anymore, unfortunately. And I know the confinement of animals is a problem. I don't know what to do about it. But we try to deal with it in an environmental manner and I know the odor is probably some of the biggest objection, so. Your voice is heard and we appreciate you being here.

JIM KNOPIK: Okay, thank you.

SENATOR SCHROCK: Next proponent. If not, we will move to opponent testimony. And if you see a long, drawn out sad face, we've got an Oklahoma State grad here, is that correct?

MICHAEL KELSEY: Yes, sir.

SENATOR SCHROCK: And it was a tough night for Mr. Kelsey. Sorry about that, but I just had to do that.

MICHAEL KELSEY: Well, I'm sitting here looking at your tie, so I'm going to be...

SENATOR SCHROCK: I'll loan it to you.

MICHAEL KELSEY: Thank you, Senator Schrock and members of the Agricultural Committee (sic). My name is Michael Kelsey; that is K-e-l-s-e-y. I'm currently serving as the executive vice president of the Nebraska Cattlemen. I'm here to provide testimony on behalf of the Nebraska Cattlemen in opposition to LB 351. Ninety-six percent of the land in the state of Nebraska is not located within the city limits of a town or a city--96 percent of the land. The majority of that land, and I would dare say the vast majority of that land is owned and controlled by farmers and ranchers. We are the true environmentalists and conservationists. We work and live, maintaining and even improving the environment on a daily basis. One classic example of this would be the Nebraska Sandhills. Thanks to the best management practices, specifically within range practices utilized by cattle producers specifically

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regarding the control of range fires, that land, the land within the Sandhills, produces more grass now than it ever has. Now, with respect to those senators and those individuals located within the Sandhills, that's provided the good Lord sends enough rain, and we'll continue to pray for that. Our first goal as Nebraska cattlemen is to improve our land so that our children might raise their children on that land. We are true environmentalists and we are very concerned about the preservation of the environment. Why is the Nebraska Cattlemen opposed to LB 351? First of all, I would like to, before I go any further, also thank Senator Preister. I was able to visit with him on a one-on-one basis about this bill. Even though we sit across the table from him on this bill, he was a gentleman and provided answers to our questions and I sincerely appreciate that from his office. First of all, the public at-large position could be utilized for any one of the three positions that's being proposed by the bill, including the minority...a representative of the minority population or someone of low income. As well, every opportunity is available to be heard at any of the EPC meetings. As we understand, they are governed by the Open Meetings Act; therefore, they must publicize when their meetings are held in due course and guests are invited as well as we understand, they seek the council of experts. Everyone does have an opportunity to voice their opinion. And finally, those representatives on the EPC are accountable because they are representing entities that are regulated. They are in the trenches on a daily basis, if you will. And so it's in their best interest, again, as I cited earlier, to do the best job as possible in preserving the environment, at least from an agricultural standpoint, so that their children might have something to inherit. We urge the committee to not advance LB 351 and I would be glad to answer any questions.

SENATOR SCHROCK: Thank you, Michael. Questions? I guess not.

MICHAEL KELSEY: Do you want to know the final score?

SENATOR SCHROCK: Do you have any comments about some of the feedlots that are on the list here that might be insightful for the committee?

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MICHAEL KELSEY: Senator Schrock, we are working with several of those feedlots who are members of the Nebraska Cattlemen. We are working also with DEQ. We strive to have a good working relationship with DEQ. We also want to represent those cattlemen in a fair and equitable manner. I will tell you that we envision a time when no fines are levied because no violations occur. And in order for that to happen, we work with DEQ, as well as the Legislature, in two areas. One is open communication so that we can communicate our needs; they can communicate the regs and so forth. And then number two is that those regulations are based upon sound science and that everyone concerned has an opportunity to voice their thoughts. So that would be my comments on those. Again, I know those are in progress and we continue and hope to work with DEQ as well as all entities involved.

SENATOR SCHROCK: One of the things that I appreciate where I live is that everybody has a pretty good sense of humor. And the one individual that paid a pretty good find to DEQ for what some people thought was a minor infraction, spent about \$150,000 putting in a new waste facility and was building a five-acre lagoon, and he was joking to me that he had lakeside lots for sale, so if you know of everybody that's interested, why, let me know.

MICHAEL KELSEY: We'll do that, Senator.

SENATOR SCHROCK: All right. I don't think he has any takers, Michael. Thank you.

MICHAEL KELSEY: (Laugh) None yet.

SENATOR SCHROCK: Next opponent.

ALICE LICHT: Good afternoon, Senator Schrock. My name is Alice Licht and I represent the Nebraska Agribusiness Association, which is a trade association of fertilizer, agricultural, chemical, and other ag input supply retailers and manufacturers. When DEQ was formed many years ago, and I see Senator Schmit in the room, one of the unique things about this agency was providing for an oversight board that deals with the regulations and rules that come through the agency.

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SENATOR SCHROCK: Alice, I don't think you spelled your name for us.

ALICE LICHT: I apologize. Alice Licht, and it's A-l-i-c-e L-i-c-h-t. We deal with many, many agencies of government that deal with rules and regulations in our industry: the State Fire Marshal's Office, the Department of Agriculture, could be the Department of Roads, the State Patrol. No other agency but the DEQ has representatives who actually have oversight and review. There might be some but those that we deal with, and it's left strictly up to the director of those various departments. And so you have really no representation by any industry, and that's what's unique about DEQ because the industries that are highly regulated by them do have some input into the rules and regulations that are written. And I think it's a good balance. I think DEQ has done a good job. We had, about eight years ago we went through a whole process of working with the department, as well as the council, on writing rules and regulations that deal with diking and containment of all fertilizer and chemical facilities. And it also involves farmers. If you're storing liquid fertilizers and pesticides. And believe me, industry did not have an upper hand when those regulations came through. I think the physicians, the engineers, and some of the environmental concerns, the conservation concerns, took an upper hand as we passed those regulations. Many of the regulations that come through are highly technical and I think that's an advantage for having people in the industry to try and explain what is going on with the changes. And I believe that there is currently oversight because any regulations that are passed, the Governor still has to sign those regulations, and so you have a second form of government that has oversight. And as Mr. Kelsey indicated, there is a hearing process that allows input to the various rules and regulations that come through. So we believe that the current system is working and we would ask you not to advance the bill, and if you have any questions I would be happy to answer them.

SENATOR SCHROCK: Thank you, Alice. Questions? Senator Stuhr.

SENATOR STUHR: Yes, Alice. We're actually...Senator Preister is not proposing removal of any...you know, this bill differs, I think, than in the past. Do you see a huge

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problem by adding a couple new members?

ALICE LICHT: I guess how I would answer that is, it's a technical committee as it exists today. And I believe that the people that they're asking for can be represented. For example, a biologist; you have a conservationist. So you're adding a person that probably is a little bit redundant. I don't have any qualms about saying a low-income or a minority person. I believe that probably a minority exists within the regulations because a minority person could be appointed into any of those positions. There is nothing that limits that at the present time. I think expanding the council is probably costly. You are adding more per diems as they hold their public meetings. And something was brought up earlier whether they are paid. I believe they are but our representative on the council indicates they get their hotel and travel and all those things included. I think you're shifting the balance a little bit. You're taking it away from the regulated industry by saying biologist, and what's the second one? An environmental...

SENATOR STUHR: Yes. An environmental health professional.

ALICE LICHT: Because I think that's already represented in a physician and so you're kind of expanding when you really don't need to. It's a growth in government issue also.

SENATOR STUHR: Okay, thank you.

ALICE LICHT: Um-hum.

SENATOR SCHROCK: Thank you. For the record, I believe the council gets their expenses and per diem but they get no salary. And they meet...what? They don't get a per diem but they get their expenses and they meet about four times a year. Next opponent. Senator Stuhr?

SENATOR STUHR: I believe in the bill it does say they receive a per diem of \$40, including travel time.

SENATOR SCHROCK: Okay, I stand corrected. Next opponent? I have a letter of opposition from the Nebraska Pork Producers Association signed by Rod Johnson...did I say support?...a letter in opposition; a letter in opposition from the Nebraska State Irrigators Association signed by Lee

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Orton; and a letter of opposition from the Nebraska Farm Bureau signed by Craig Head. (Exhibits 14-16) Is there neutral testimony?

MIKE MOSTEK: Good evening, Mr. Schrock and members of the committee. My name is Mike Mostek, M-o-s-t-e-k, 1125 South 103rd Street, Suite 800, Omaha, Nebraska. I'm attorney in a law firm practice in Omaha; I'm a partner at Koley Jessen Law Firm. I'm a member of the Governor's Council to Keep Nebraska Beautiful and the Governor's Council on Lead Safe Neighborhoods in Omaha. I'm also vice chairman of the Nebraska Industrial Council on Environment and I'm appearing here today as an unpaid volunteer spokesman for the Nebraska Industrial Council on Environment. A little bit about NICE; that's the acronym we use. It's a group composed of approximately 150 businesses and industries and associated professions in Nebraska. I've been involved with NICE for more than ten years. I've been practicing environmental law primarily representing industry for almost 20 years. NICE is appearing today and has over the last two or three years at the behest of Senator Preister. We've appeared with many, many people in the past that were vigorously opposed to his bills in the past that sought to gut the EQC and replace it. And I visited briefly with Senator Preister prior to the hearing today and complimented him on the new tack that he's taking, and that was a since compliment on the behalf of the members of NICE, coming straight from everybody who I spoke with. However, we are not in favor of the bill. There are several things that just leave us scratching our heads, and I think some of them have already been pointed out. As I read the statute, and I agree application may be different than what is written in the statute, but I think the balance on the body is already there. And there are currently 16 members. As I count them, it looks to me like there's about half that have the word "industry" tagged behind them and about half, you know we've got conservation, we've got labor, we've got a professional engineer, a physician, county government, two from municipal government, and one from the public at-large. In the past, we've stressed the importance of recognizing what this body is and what it does. And I'll say this, there is no equivalent body on the federal body. There is no federal body to which the EPA proposes regulations which then passes or doesn't pass the regulations. And there are many states that operate like the EPA. In other words, they

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don't have a similar body to the EQC. So we have something very unique here. And I think we need to be frank about how the EQC has worked over the last 30 or more years. And the way it works the majority of the time is regulations are created by the EPA and are mandated by the federal agency, passed on to DEQ, and DEQ passes them on to EQC, and the EQC passes them. And the body has not been very active. At the same time, we have to recognize that regulations carry the force of law. If you violate a regulation, you can be fined as the chairman has discussed with some of his constituents. You can also be thrown in jail. So it's a quasi-legislative body. They're making rules and regulations that carry the force of law and are in the nature of legislation. So it is an important body if we're going to have it. Our other comments would be that the statute already provides that the EQC is to take socioeconomic factors into account in making its regulations. And I believe that provision in the statute has been there from the very beginning. We agree it needs to be a representative body, but now we'd be moving from 16 to 18, and eventually perhaps it could grow to be as big as the Legislature itself. And I don't want to see that and I don't think any of us want to see that. We are adding to the expense of government because of the per diem that's involved and we are making government bigger by ostensibly making this body more representative. So on behalf of the members of NICE, we don't adamantly oppose this bill; we don't support it; and so we chose to appear neutral at this time.

SENATOR SCHROCK: Thank you, Mike. Are there questions?
Senator Smith.

SENATOR SMITH: Are there currently any minorities on the council?

MIKE MOSTEK: I don't know, sir. I mean, I don't know who is a minority and who is not, or who counts themselves as a minority and who doesn't. I would just prefer not to comment on that.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Other questions? Thank you, Mike. Next neutral testimony?

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LORAN SCHMIT: Chairman Schrock and members of the committee, my name is Loran Schmit and I am representing myself here today. My name is spelled L-o-r-a-n S-c-h-m-i-t. And I appear here today in a neutral capacity and I want to express my appreciation to Senator Preister. He has been a very devoted individual in the Legislature in this area and has always discussed these issues with anyone who was interested in promoting the environment and a good environmental cause here in Nebraska. I want to thank him also because he is only trying to expand this agency by two members. He's not trying to wipe it out like one of my other bills is being proposed for this year, so I feel like I'm relieved in that regard. I just wanted to say a couple of things about the agency. I think first of all when it was created 34 years ago it was most certainly an experiment and there were those who insisted that a 16-members council could not function. I believe the council has functioned very well and it has had a broad representation from across the population of Nebraska. I do not see any real harm in expanding it by two members. I agree with some of the other witnesses who have said that the categories that Senator Preister wants to include could, of course, be filled by any of the other, almost any of the other criteria. But I do not think it would make that much difference. I've noticed over the years that the council has been in existence they had persons from the far right and the far left have been appointed to the council. And it is most interesting that once they have been a part of the council that they have melded together and functioned very smoothly, and I commend them for that. I think that the...it's also very credible that the directors and the agency staff people have worked very well with the councils over the years, and have I think done a very good job of protecting the environment in the state of Nebraska. I do not agree with my friend, Mr. Knopik, that the council has not done their job. I think they have done it. I think they have a very difficult job, and as an agricultural person myself, I agree with Senator Schrock. Sometimes we feel like we are the endangered species and ought to have some protection. As Mr. Kelsey said, 96 percent of the land in Nebraska is owned and operated by ranchers and farmers. And it has always been my contention that we were the original environmentalists and have striven very hard to protect the environment. I think that we can address these issues with the existing council or with the two additional ones; it would not make

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that much difference. But I think the most important thing is that we recognize that all of these factors have to be considered. All sectors have to be involved. And the council has to continue to work together. If the council works this good for the next 34 years as it has in the past 34, I think that I'll come back here again, Senator Schrock, and congratulate whoever is chairman of this committee. I have to say one more thing in defense of the NDEQ. We gave them a rather limited responsibility when they were created. And each legislative session that responsibility has been increased and the burden has been increased and the advice from the public has been increased, I'm sure. And it is a very difficult responsibility and they've handled it very well. I have no further comments except to say that regardless of what the committee does, I rely upon your judgment and wisdom and I know you'll make the right decision. Thank you very much, and I'll answer any questions.

SENATOR SCHROCK: Thank you, Loran. And Jim Knopik, you should take notice that when you testify neutral testimony you have the last word, so. But are there questions for Loran?

LORAN SCHMIT: Sometimes you learn, Senator.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Senator Hudkins.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: Senator Schmit, since you are testifying in a neutral position I can ask you this, and Senator Preister may want to address it in his closing remarks, as well. We have a good number of appointed task forces and boards in this state. And every person who is appointed to those boards, if they are qualified, if they meet the criteria, and if they're interested, they all have or could have good input on those various committees, commissions, and boards. Are we starting to see the requirement, then, that every single one of these boards will have an...just curiosity...but every single one of these boards will then have a member of a minority of it? Now, I'm not saying that's good or bad, but I'm just...the Game Commission, you

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know we have eight members, nine?

SENATOR SCHROCK: Eight.

SENATOR HUDKINS: Eight. Should one of those be from a minority? We have the Water Quality Task Force, and of course, you know, that's the irrigators and all of those people. Should there be minorities, because, my goodness, they use water? Any other task forces? I would just like your opinion on that.

LORAN SCHMIT: Well, very frankly, Senator, I believe you make a very valid point and I believe that this Legislature itself is the best example of a body that is made up of a wide variety of individuals and works very well together. I think that the Governor, when they make those appointments or however they are made, takes into consideration the persons that they appoint. And I do not believe any Governor that I have worked with in the last many years would appoint a person who would bring to any board or any commission a narrow point of view. I have watched hundreds them over the years and I think that when they come to a board like this, they recognize their responsibility to the public at-large. They bring their expertise from that particular position, whether you are a physician, a farmer or rancher, teacher, a minority member. But the decisions that they make, I think, are made most of the time in the interest of the people. And thank you very much.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions for Loran? Senator Kremer.

SENATOR KREMER: I think you followed the Environmental Council...

LORAN SCHMIT: Very close, yes.

SENATOR KREMER: ...closely since you're interest in it, and I was wondering do you feel like there are times when some of the industries here are self-serving, are trying to defend their own actions or anything, or do you feel like basically they've tried to support, to accomplish a goal together, or what? I guess I don't want to put words in

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your mouth but.

LORAN SCHMIT: Senator, your father and I talked about that when we created this agency. And there is no doubt that, as I said, they bring their expertise and they speak from the experience that they possess as a member of an industry. But when they get on the council I have been amazed at how well they listen to each other and I've not seen the kinds of knock-down drag-outs we used to have sometimes in legislative committee hearings because they seem like they have a better...a good dedication to work together. I've been very pleased with them. I do not fault the industry representatives; I do not fault the public, nor any of the other specific groups that are mentioned here. And when we created the council we made it broad; we knew it was going to be a large body. We were concerned that it would not work but I believe it has worked. And sometimes I have chided some of them for not being a little more aggressive and little more regressive, but I can think of a lot of them who I thought would be cantankerous to work with on the council, and they were not when they got there.

SENATOR KREMER: But it seems like if there was one industry trying to protect its own whatever, it might be you have 15 others that are not of that industry.

LORAN SCHMIT: Exactly right; exactly right. That's a pretty heavy imbalance, you know, and I don't think that they've been...I don't think we've seen that and I don't think it would work, and I commend the council for being very broad-minded over the years.

SENATOR KREMER: Thank you.

SENATOR SCHROCK: Other questions? Next neutral testimony? I was going to comment when Mr. Mostek said that, heaven forbid, they get as the Legislature, and I think he inferred then we would have chaos. If there is no other testimony, Senator Preister, you are authorized to close, and at your convenience open. And I would say if we take 40 minutes for the next three bills, it will be 5 o'clock and that's probably all the committee wants to endure today, so we'll try and keep each one of the next bills 40 minutes each.

SENATOR PREISTER: Thank you, Senator Schrock. And thank

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you to the committee. I really appreciate the attention that you've given to this measure. I take it very seriously, obviously. The things that I'm asking for here and the one that Senator Louden, I appreciate you asking about, is actually getting people who are willing to serve and who are able to take time out of their lives to serve. We only need one person. That person can come from anywhere in the state. And that person only has to attend four meetings a year, 16 meetings total. And Senator, I can guarantee I can fill that position if it were only up to me to be able to do so. So I understand that there are sometimes difficulties in getting people who aren't having to make a living, aren't having to support their family, and who have reliable transportation to travel because they are low-income people. And yet, shouldn't those people...isn't that what this country was founded on? Everybody having equal representation, not just representation by the wealth and the powerful? So to me it's a very heart-and-soul issue of what our nation was founded on. And I think...I know I can find people who can serve, who are willing to serve, and who would serve very well. The other thing I would just highlight is that most railroad tracks and rail yards are not located in wealthy neighborhoods, although rail lines will go through rural areas, they'll go through or close to some wealthy areas, rail lines tend to have low-income housing along them. Not many people, although there are some who like the sound of trains, a lot of people don't like to have their house rocked or vibrated because of the weight. They don't like to take the chance of spills. They don't necessarily like the noise. Rail lines tend to go through industrial areas where they're loading and unloading; that's the nature of the business. So when you have low-income people living there, they stand a greater risk of being impacted by a spill. So the folks who were impacted by the spill in your area, Senator Smith, were more likely to be minority people. It doesn't mean that they were directly impacted in a harmful way, although if the contamination was running down into their home areas they were impacted. So you're more likely to get an impact on minority people because, one, the housing stock around industry is generally lower-income housing. Where you have industry, you're more likely to have a problem. So low-income people are affected disproportionately. They have more likelihood of being impacted. I'm not saying that there is a disproportionate balance on the committee that's

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making that worse, but when you look at the makeup of the committee, there are eight representatives directly related to industry. And so if we're not going to have somebody that's directly impacted, why did we single out all of these other industries? Senator Hudkins, you talked about having a minority on other councils, but I didn't create the makeup of this council, and this and other councils do have specific requirements. They do want people representing them because they want their view to be heard. The ag industry certainly does. The food production industry certainly does. Municipalities certainly do. Why shouldn't low-income people? They're disproportionately impacted. Other people can move and go to other areas and not live around some of the contamination like the lead contamination in my district. Those folks that are directly impacted I think should have a say. Isn't that what democracy is? All of these other organizations have a say. What's wrong with having one voice? We didn't hear any opposition other than it isn't broke, why change anything. There was no reason that I heard, and I didn't see the letters, that said that this is a bad idea. I heard it said a minority could be any one of these other positions. I heard it said that one of the other positions could also be a biologist. But I didn't hear one reason that said what I'm attempting to do is bad. There was not one mention that the council is too big already and isn't functioning well. And in fact, when we've heard before from the representatives from the council they sometimes have trouble getting a quorum. So it isn't that it's too big. Sometimes they don't even have enough people for the meetings. Now the weather may be a factor in that, but they only meet four times a year. And so I think having one representative from the people that are affected, when you've got a majority of people that are regulatees, I think one person, one minority low-income person who is directly impacted would sure give a voice to those that feel disempowered and voiceless. And that's what I'm asking for. And two other people that I think bring an educated perspective, another perspective, and that's what I'm asking for. With that, I'd be happy to...and in case you think I am dedicated to this, you're absolutely right.

SENATOR SCHROCK: Senator Louden.

SENATOR LOUDEN: Yeah, Senator Preister. I think maybe you answered your own question about having people serve on

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there when you said part of the time they have problems with a minority...or problems with getting a quorum. I guess my thought was when I was talking to Cecilia was with the Mexican Commission we've had problems getting people from the western end of the state to be able to serve on that. Would you be willing on this council here, that if they only have four meetings a year, say they had one in Chadron, one in Scottsbluff, and one in Lincoln and one in Omaha each year, or have two out west and two in the eastern part of the state each year, and do you think that would affect getting your quorum whenever we had a meeting out at the western end of the state? Do you think that that council should meet in various areas of the state every year?

SENATOR PREISTER: Senator, I attract enough opposition to my bills without expanding it further. I would say that it might be something to consider and I'm not attempting to do that here because that broadens the scope and we really didn't have a full public hearing on that. But we do teleconferencing. I've used it in this committee; this committee and other committees have used it and I think it works well. I don't know statutorily whether or not that could be done with the Environmental Quality Council but it's something that might be considered and at another time under another venue I could certainly be supportive of doing something like that, or having meetings in other areas.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Yes. I see where the public at-large person shall serve until the member representing the minority party is appointed. Do you have any idea, is that term about to expire for that public at-large person?

SENATOR PREISTER: Yes, it is, Senator. There are, I believe, six or more of them that will be expiring this year, and as the bill is drafted, whoever the Governor appoints this year would serve that full four-year term. So this wouldn't even go into effect for that position for another four years. So my intention is, although I would like to have it happen sooner, because of the way the position is ending this year, I didn't want it to look like I was targeting somebody specifically, and so I drafted the

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legislation so that it would take place after that person had completed their term. Again, I'm trying to be accommodating and take into account the things that people have expressed in opposition.

SENATOR STUHR: Right. Thank you.

SENATOR PREISTER: You're welcome.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Are there any minorities currently on the council?

SENATOR PREISTER: None to my knowledge, Senator.

SENATOR SMITH: Okay. And did I hear you suggest that enlarging the council would make it easier for a quorum?

SENATOR PREISTER: You would have two more people that might be able to attend a meeting, but my point there was that currently 16 isn't too large and no one to my knowledge has expressed any problem with it being too large, so adding two more would not enlarge it so much. But the fact that at times it's been a problem even getting that many people together I see as not being more detrimental by adding two people.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Senator Kremer.

SENATOR KREMER: Well, I have a couple questions, I guess, about the low-income or minority. Low-income, I think I've seen quoted where the lowest income counties in the nation almost, a couple of them are out in western Nebraska; I don't even know the counties for sure so I won't name them. So you could very likely have a low-income person on there that had no recollection, no knowledge of what happens in the lead areas of South Omaha. I mean, it could be an agricultural person, probably is in some of those counties. So just to have that low-income person on there really may not add any more expertise to that in some of the areas you're talking about like in Omaha, so I wonder if we really gain that much...

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SENATOR PREISTER: You're right.

SENATOR KREMER: ...other than it seems like the Governor should try to identify somebody in different areas when he goes to appoint these people, and maybe he does now is what I'm thinking. Are we going to gain much from that?

SENATOR PREISTER: Well, and Senator, you get at the heart of what I have seen and others have seen as a problem in our process because the Governor recommends people to various boards and commissions and the legislative body gets a name and a little bit of limited information. We have a brief hearing and we make a decision to approve them. The Legislature really doesn't take a very active role in that whole process. Occasionally, some of us might recommend somebody, but the individual is what's important, not necessarily who they represent. And you're right, the guidelines are such that there really aren't a lot of criteria and many different people can fill an individual position. And sometimes people are nominated who don't really represent that position. So it's a problem with the process, I think, that I've been working at addressing over a number of years. This is just one area. Yes, the Governor could appoint anybody to these, and this bill is no guarantee that I'm going to get more balance. But I'm hopeful that at least it's an opportunity to get some.

SENATOR KREMER: How do you identify a low-income?

SENATOR PREISTER: By the federal poverty guidelines; someone whose income would be below...

SENATOR KREMER: So they would have to submit their W-2 or their income tax statement, or...?

SENATOR PREISTER: Just like somebody submits their financial disclosure statements now.

SENATOR KREMER: Some farmers may qualify one year and maybe not the next, huh.

SENATOR PREISTER: Senator, I thought farmers qualified every year.

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SENATOR KREMER: Well, I don't know about that.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: What part of the financial statements communicate income, in terms of low income?

SENATOR PREISTER: Right now, the disclosure statement talks about your interests, what you have financial interest in. It doesn't specifically require you to list your income. But along with that kind of a requirement where you're telling what you're involved in, you could also ask for their financial income and whether it's an actual tax statement or... That would probably be the best way to identify them. But that would be one way of doing it.

SENATOR SMITH: All members?

SENATOR PREISTER: All members wouldn't have this as a requirement, so I don't know that it would be necessary for all members. But since this is a specific position, that would require that. Although if they are a minority, then that one wouldn't necessarily even be applicable.

SENATOR SMITH: Okay, but what instrument, then, would determine the actual low income? I mean, because the current form doesn't have that.

SENATOR PREISTER: Right.

SENATOR SMITH: So you would...that new designation...

SENATOR PREISTER: If they were qualifying...if the Governor were appointing them as a low-income representative then there would need to be verification of that so we knew that they met it. Although a number of people have not represented the industry that they represent in the past and so there wasn't a hard adherence to those qualifications. But in this case I assume federal income tax return would suffice.

SENATOR SCHROCK: Other questions? Thank you, Don; Senator Preister, I mean.

SENATOR PREISTER: You're welcome, Senator Schrock.

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SENATOR SCHROCK: That concludes the hearing on LB 351 and we will open the hearing on LB 658.

LB 658

SENATOR PREISTER: (Exhibits 17-19) Thank you, Senator Schrock. My name is Don Preister, P-r-e-i-s-t-e-r, and I am here as the primary introducer of LB 658. LB 658 would limit general permits for confined animal feeding operations to the old Class 2 size and under as follows: less than 5,000 cattle, less than 12,500 hogs weighing over 55 pounds per head, less than 10,000 chickens, less than 7,500 ducks and turkeys. This bill is the same as an amendment which I proposed to LB 916 last year during debate on amending the Livestock Waste Management Act to come into compliance with new federal regulations. The page just gave you a handout that lists facilities that were provided to me last April by NDEQ which listed all of the facilities approved to operate under the existing open lot general permit at that time. If you look at that list, you can see where the dark line is drawn through. That distinguishes where the permits would change. Above that line, people would then have had to or with this bill would be required to get an individual permit, rather than a general permit. You will also notice that there are 11 facilities highlighted in yellow. These are facilities that were sent letters by the DEQ last May, advising them that their groundwater monitoring report showed there was contamination in the groundwater at their facilities. These 11 facilities equal 39 percent of the cattle facilities notified by DEQ. DEQ sent out letters to 28 cattle facilities and one hog facility asking them to supply additional information regarding groundwater contamination. I am also passing out a document, and that's on the back side, when each of the facilities was approved to operate under the open lot general permit. If you'll notice, 11 of the facilities were approved within two months of being sent the letter regarding groundwater contamination. So on one hand they're given an open lot permit, and within two months DEQ is going back and saying you've got contamination. The value of that is if there was an individual permit, there would have been more assessment initially and things, I think, may have been worked out better for the operator, as well as better for NDEQ. I

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believe that if my amendment had been adopted, nine of the highlighted facilities would have had to apply for that individual permit and would have required that more thorough review prior to the approval. Hopefully, this review would have picked up on these monitoring data. I believe my amendment is a reasonable compromise which still allows the issuance of some general permits, but requires the larger facilities to apply for an individual permit. Our groundwater is too precious a resource to treat permit approval with such a broad sweep, as is the case with the issuance of general permits. I would also offer an amendment...I've got another handout that I can provide to you...but I would offer an amendment because I neglected to include dairy animals, swine weighing 55 pounds or more, and ducks and turkeys to make it complete with the existing statute, so I don't have all of those added and this amendment would address that, so I submit that also to the committee for your assessment. And with that, Senator Schrock, I would entertain any questions that committee members may have.

SENATOR SCHROCK: Questions for Senator Preister. Senator Hudkins.

SENATOR HUDKINS: Senator Preister, you said that this bill is an amendment that was not adopted last year. Could you refresh our memories as to why it was not? Was it introduced on the floor and discussed? Did we run out of time? Did we vote and it was...? What happened?

SENATOR PREISTER: The bill was in committee and there were some discussions in the committee, and the chairman may wish to forget that whole bill for the challenges we had with it. But on the floor I introduced this amendment to the body following those committee discussions and following the committee sending the bill out to the floor, which I also voted to do. On the floor there was discussion but the amendment did not get enough votes to pass. So I'm back with a whole new committee hearing and a whole new attempt at this time.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions for Senator Preister? If not, can I see a show of hands of proponent testimony?

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Opponent testimony? And neutral testimony? Okay, I think we can do about 15 minutes for proponent and about 20 minutes for opponent. And good to see you.

KEN WINSTON: (Exhibit 20) Good afternoon, Senator Schrock and members of the Natural Resources Committee.

SENATOR SCHROCK: Five minutes max, okay?

KEN WINSTON: My name is Ken Winston. I won't need that much unless I am asked a lot of questions. My name is Ken Winston; the last name is spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB 658. We believe it's important for the public to have input into the permitting process for large animal feeding operations. Senator Preister talked about the fact that there was groundwater contamination in a number of facilities that had received approval to operate under a general permit. The mere fact of groundwater contamination, of course, is a matter of grave concern and the fact that they were received for approval under a general permit without any opportunity for public comment is of even graver concern. I would like to give a little bit of an example in order to put it into perspective. Actually, I think I'm being conservative in my estimates here, but a facility with 5,000 head of beef cattle according to the information that I have seen would produce more waste material than a city of 5,000 people...of 20,000 people, excuse me. There are also issues of odor, traffic, and the application of waste material to fields. Now, I don't think that anyone would say that you could site a city of 20,000 people without having some sort of public comment. As a matter of fact, any time there is a zoning change or there is an annexation or any time there's a new development, a city will hold a hearing to determine whether that's appropriate. But in this particular situation where you have general permits that are offered, that are available for facilities that have more than 5,000 head of cattle and there's no opportunity for public comment, no opportunity for any kind of input into the process. And as Senator Preister indicated, the environmental impact can be very serious indeed. So for those reasons we're advocating the advancement of LB 658. We're also in support of the amendments that Senator Preister offered today. I'd be glad to answer questions.

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SENATOR SCHROCK: Thank you, Ken. Are there questions? I might just add, Ken, I've never wanted to spread the waste from a city on my land, but the waste from the feedlots sure is good fertilizer if you can spread it properly on land.

KEN WINSTON: Well, some places they do spread the waste from cities on...I'm not advocating that necessarily, but they do that, so.

SENATOR SCHROCK: I stand corrected. You are right.

KEN WINSTON: And the waste from cities is usually treated. I don't know if the waste from the feedlots is.

SENATOR SCHROCK: Okay. Thank you.

KEN WINSTON: Thank you, Senator Schrock.

SENATOR SCHROCK: Next proponent, please.

GEORGE BRAY: (Exhibit 21) Good afternoon. My name is George Bray, G-e-o-r-g-e B-r-a-y. I'm here on behalf of the Great Plains Environmental Law Center and I just want to submit the letter that Steve Virgil has prepared. He's unable to be here. The first paragraph of his letter states that please accept this letter in response to Legislative Bill 658. The Great Plains Environmental Law Center supports LB 658 and believes that this bill addresses vital needs in our environmental protection laws.

SENATOR SCHROCK: Thank you, George. Are there questions? Are you a new face to the committee?

GEORGE BRAY: Absolutely.

SENATOR SCHROCK: Well, welcome.

GEORGE BRAY: Thank you.

SENATOR SCHROCK: Thank you for your testimony. Next proponent. I have a letter here from Joan Harbeson from Perkins County at Elsie and she supports the provisions of LB 658. (Exhibit 22)

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JIM KNOPIK: (Exhibits 23-27) Okay, good afternoon, senators. My name is Jim Knopik, K-n-o-p-i-k, and I am here in support of LB 658. I have some more documents to pass out to you. I guess I'm trying to load you up with information this afternoon. I believe the individual permits that are proposed are too high of a level. You know, depending on which areas that you live in the state has a lot of different effects on the environment depending on if you are in sand or clay or wind or whatever, and so with those high numbers in certain areas of the state, I believe they are way too high and these facilities at these stocking rates are an environmental hazard. Some of the information that I passed out, first, and I don't know what order you've got those, but there is one there that was an e-mail sent by Lisa Kennedy to a doctor up in Minnesota, and I can let you read that in your spare time. And then I have a response from that doctor, and this was in an area where she lived with her family that was...she believed there was some problems with health, health problems in their family due to the hog confinement. And I think that doctor answers some of the questions that she might have. It wasn't determined that health problems were coming from there, but it was possible that that was a likely cause. So, let's see, I have some more here. You haven't got the letters; I guess I have them here yet. Did you need...you didn't have my testimony; here is my testimony and here's the letters to the...from Lisa. I've also got some other information there, what I would called science-based evidence. And you can read through that and you might have seen these before. But talking about the BODs and a potential of strength of contaminants, and you can look at that. The thing that I wanted to show you today is I've got some samples of water here, and one is from my son's family. He lives southeast of Fullerton. And he lives in an area where there isn't a lot of large operations yet. They're what I would call maybe small to medium-size in our definitions maybe we have today. But he's got some problems down there and there's a...he's got five new kids in his family and what we've been learning with the possible water contamination is that it's very unsafe to drink or consume, as well as probably even taking baths or showers in that kind of water. I didn't...when I made out these papers I didn't...wasn't cautious enough to look at the dates, so I got...if I didn't get it scratched on your paper, it says "after" on there, and if wasn't scratched out and put "before," I need you to

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do that. So the one that says...they're just backwards. But anyway, the one that is dated 11/3/2003, this was a test that they took of his water before they put in a system that conditioned the water, a water softener and a purifier in their house because of their concerns of these tests that came back. You can see that it had chloride in the water; the nitrates were at 41.9; the standard is 10 parts per million. It shows a high level of magnesium and potassium and sodium in the water. But there is also coliform in the water. The magnesium is what some believe is the reason why the color is yellow. I got concerned a few weeks ago when I was over there doing chores for Tom, and I was watering his hogs and filling up a white plastic bucket and it was...you couldn't hardly see the bottom. It was nearly the color of the curtains behind you. And I got concerned...we've got hogs at both places...and while his wife was in the hospital, when I went back to do chores later that night I noticed that his hogs only consumed about half the water that mine did at our place. And I always look for animals to tell you some kind of a story there, but that was only one day. And so there is nothing solid in that and it's certainly not science, but I just want you to realize that what my son and his family went through to try to make the water clean enough for them to enjoy what we have where we live. And they spent \$3,500 doing this. And if you look at the test, they didn't purify the water so it was still healthy to drink. The nitrate levels are still high; in fact, this is only like a month or so apart and...well, I'm sorry, it's about a year apart, but the levels of nitrates are even higher and it's basically the same time of the year. And I guess that's the point that I want to make. And I wanted something visual because I know there's a lot of problems in Grand Island going on, too, but that's a different thing and I'll get to that later. But it comes down to if they're living in an area where the population or the concentration of animals was low throughout history, you might say, of those farms around there, and there are signs of problems because of that, then what is it actually like around these larger confinement areas? So I think that in that it says that these number of animals that we're talking about the individual permits here, ought to be much lower than that or that there is definitely a reason to put a animal limit in there.

SENATOR SCHROCK: Thank you, Jim. Are there questions?

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Senator Louden.

SENATOR LOUDEN: Yeah, I was looking at your paperwork here. I presume this one was reported November 2003 and the other one was reported in December 2004?

JIM KNOPIK: Yeah, yeah.

SENATOR LOUDEN: Well, how come your one after you put the treatment plan in, the coliform was unsafe then for a year later.

JIM KNOPIK: Yeah.

SENATOR LOUDEN: That coliform isn't necessarily feedlots. That could be from your own septic tank system from your house or something like that.

JIM KNOPIK: It's possible. Yeah, it's possible.

SENATOR LOUDEN: So, I mean, we don't know what was contaminating your water, but there's something happened from the first time to the second time. The first time you could probably drink the water; the second time when that coliform shows up, I certainly wouldn't be drinking it then.

JIM KNOPIK: That's right.

SENATOR LOUDEN: Which is that, is that the yellow sample that comes from his place?

JIM KNOPIK: Yeah.

SENATOR LOUDEN: And the other one? How many miles...

JIM KNOPIK: That one came from my place.

SENATOR LOUDEN: How many miles apart is it?

JIM KNOPIK: It's probably about 20.

SENATOR LOUDEN: Twenty.

JIM KNOPIK: He's about ten east and...

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SENATOR LOUDEN: But you could very easily be picking up different minerals.

JIM KNOPIK: Oh, yeah.

SENATOR LOUDEN: The other, is that...that could be some sulfur in that water from minerals in the ground, could it not be?

JIM KNOPIK: Yeah.

SENATOR LOUDEN: Okay, thank you.

JIM KNOPIK: Yeah, I didn't want to imply that there was anything wrong with the water, you know, but just it's something visual here to draw...you know, put up a red flag about that. And there is something the matter with that water. You can see that there...I wish I would have had some tests of mine, but mine is nearly pure at our place yet, so.

SENATOR SCHROCK: Thank you. Senator Kremer.

SENATOR KREMER: Jim, did you say around your son's place there was not large hog operations there either?

JIM KNOPIK: There was some smaller ones like I would say around 500, 600 head.

SENATOR KREMER: So you aren't saying that that comes from a livestock problem.

JIM KNOPIK: I'm not saying it comes from anywhere; I'm just saying that there's a problem with his water there and I don't know what the cause is.

SENATOR KREMER: Okay. It wouldn't be from your own livestock then?

JIM KNOPIK: No, because he just moved on there like a year or so ago and he's only got five hogs there, so, no.

SENATOR KREMER: Okay. That shouldn't do it.

JIM KNOPIK: No.

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SENATOR KREMER: Okay, thanks, Jim.

SENATOR SCHROCK: Other questions? Thank you, Jim.

JIM KNOPIK: Thank you.

SENATOR SCHROCK: Next proponent? Opponent testimony? I have a letter here in support from Lisa Kennedy from Cedar Rapids, Nebraska. Opponent testimony?

DUANE GANGWISH: Good afternoon, Senator Schrock and members of the committee. My name is Duane Gangwish. I represent the Nebraska Cattlemen and also myself as a feedlot owner. Gangwish is spelled G-a-n-g-w-i-s-h. We're here in opposition to this bill and as a couple of technical items. The permitting process covered by the Livestock Waste Management Act is an NPDES permit. The NPDES program is focused primarily on controlling surface water runoff for the protection of waters of the state. DEQ has decided...DEQ in the past has decided whether a general permit or an individual permit was required, based upon the issues directly related to the facility being concerned. The environmental issues are a far superior mechanism to decide whether a general permit or an individual permit is in the best interest of the state. The individual permit would require both a public notice and potentially public hearings. There is no problem with a public hearing. The only downfall of this is, for example, if a properly permitted facility desired to and applied for a modification to their permit it might be a very small area of the feedlot per se, two or three acres of a portion of, say, 50 acres. That would trigger a major modification within the definition of LB 916 and therefore, for such a small item, the whole thing would be brought back up and the entire operation would again be subject to reexamination. And this is for any time. Most of these livestock operations are a work in progress and therefore, there is always a little bit of maintenance, a little bit of change, and a little bit of growing or some things. And so each time you go through this with an individual permit you have another reexamination of the entire operation, and it's a burden to both the facility and to DEQ. The burden to DEQ, although we don't feel quite sorry per se for DEQ, the hearing process can only address the issues that are in the

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application before them. And it can only address the accuracy and the completeness of the application. Conversations by myself with DEQ indicated that public comments so far in the last four to five years have not led to the denial of a permit of an NPDES permit. They have pointed out some errors, if you will, within the permit, but not the denial of it. I myself as president of CD Feedlots in Hartington, Nebraska, we have an individual NPDES permit. In fact, we were the first one...or the last one to receive one under the old process, and we will be reupping that here in March. It is a burden. It is a burden. The fiscal cost to the state is also to the producers. DEQ has indicated that it may take as many as two or three FTEs to go through the individual permitting process and the hearings if this comes to play. DEQ has the authority by statute to collect fees now, and those fees represent up to 20 percent of their program costs, so theoretically, an individual facility could be paying for their own public hearing in some small portion. Senator Preister presented testimony that would lead one to believe that a facility permitted under the individual permit versus the general permit would somehow have greater scrutiny. And there are representatives of DEQ in the audience today and you may want to clarify with them. It's my experience and my belief that there is one set of regulations and it is DEQ's discretion whether they apply or issue a general or individual. The rules do not discriminate between the type of permit that's issued, and representative have that discretion within the department. That concludes my comments. I'd be happy to answer any questions.

SENATOR SCHROCK: Thank you, Duane. Questions? I guess you're off the hook.

DUANE GANGWISH: Thank you.

SENATOR SCHROCK: Next opponent.

CRAIG HEAD: Good afternoon, Senator Schrock and members of the committee. My name is Craig Head; it's C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau Federation, here today on behalf of the organization in opposition to LB 658. I guess I will just start off by saying that we believe general permits are a reasonable method for the department

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to use when issuing permits to livestock producers in the state and we've been supportive of them doing that for the past two years. A couple of years ago they initiated the first general permit in the livestock area for livestock operations. That particular permit was an open lot feedlot permit. And we thought it was a good idea at the time for a couple of reasons. First of all, it encourages administrative efficiency within the department. It provides a manner in which they can go forward in issuing a permit and reduce their paperwork load which obviously is a benefit to them and the producers. And secondly, as was the case at that point in time, and as is the case today, the department, as was mentioned earlier, does have the ability to distinguish between which operations they feel should have a general permit and which operations should have an individual permit. So that discretion is there for them to go ahead and use as they feel appropriate based on an individual application. As was mentioned earlier in the opening, I think there was some misconception out there that when we say general permits versus individual permits, the general permits there's less scrutiny in terms of the review of that application and review of the regulations that they are bound to abide by. And to our understanding that's not the case at all in terms of the review application process. The review by the department is similar, whether or not it's a general permit or it's an individual permit and as the previous testifier said, those regulations are in place for everybody and we don't single out who we're going to treat differently under that scenario. Everybody is subject to the same requirements. Furthermore, I guess in terms of the bill itself, the language included in it, I know Senator Preister had offered an amendment. The bill goes through and identifies certain species and certain size of operations that they think shouldn't be allowed to have individual permits. We're not sure exactly why that was done and I know there was a reference made that it would get us back to the situation where we used to have where these would be subject...or limitations would be that only Class IIIs and IVs wouldn't be allowed to have general permits. But looking at the amendment briefly as I did, I'm not sure that's even right now with the amendment it's an apples to apples and oranges to oranges comparison. So we're not sure why we're trying to make that differentiation right now in that process. And I guess from that standpoint, we're just aware of any other case in the NPDES

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permitting program where we've singled out a certain industry or businesses within an industry and tried to say that you cannot have general permits or that you cannot be issued individual permits. And to my knowledge, the livestock industry in this case would be the only ones that we've singled out and said that we wouldn't allow that to happen. And we're not sure why we would do that at this point in time, given our past history. The last thing I would point out that was mentioned earlier, there is a rather large fiscal note attached with the bill and we are in a process now where next year the livestock producers will be helping pay more in terms of the cost of the program and certainly any efficiencies to the program we're supportive of. And so we would encourage the committee to kill the bill.

SENATOR SCHROCK: Thank you, Craig. Are there questions? Next opponent.

CRAIG HEAD: Thank you.

SENATOR SCHROCK: I might add that at the end of these hearings DEQ is present if there is any committee member that wants DEQ to come up and testify in a neutral capacity for informational purposes, please let me know. Go ahead, Ron.

ROD JOHNSON: (Exhibit 28) Senator Schrock and committee members, my name is Rod Johnson, executive director of the Nebraska Pork Producers Association, here representing our producers in opposition to LB 658. I'll be very brief. The concept behind the general permits has been talked about already. We feel that the ability of the NDEQ to standardize the treatment of livestock operations which are similar in type and monitoring requirements...

SENATOR SCHROCK: Rod, you didn't spell your name.

ROD JOHNSON: J-o-h-n-s-o-n.

SENATOR SCHROCK: That's the Swedish version, right.

ROD JOHNSON: The Swedish version. You have interrupted my train of thought all of sudden here.

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SENATOR SCHROCK: Sorry about that.

ROD JOHNSON: And that's not hard to do. But by being able to standardize the treatment of facilities within...that are similar of a common type, this increases the efficiency of the DEQ and it allows operations to operate under a more efficient manner. The limitations that are placed under the DEQ based on the draft, as well as the amendment that was offered in there, I feel are...could be considered very discriminatory against certain sizes of operations, certain species out there. I think a close observation of those, and not to pick on my friends in the cattle industry, but when you put 5,000 cattle versus 2,500 hogs and put them on a comparable basis, I think you would find that the amount of facilities and the amount of exposure there is not on a one-to-one basis in my opinion, so I think this is one of the issues that is present in the way this current draft has been put together. Basically, it's our opinion that the discretion of the director of the DEQ should be allowed to operate under the determination of who should or should not be allowed to receive a general permit as compared to individual permits. The development of the general permit process is still under way. At this time, general permits are not even available for our industry so I think until we get a system in place where the general permits are available and we can see how they work, I think we should not use these statutes to set sizes of operations or put limitations on certain species. I think we should allow the system to work and allow the DEQ to do their job under the statutes as they stand right now. With that, I would answer any questions.

SENATOR SCHROCK: Questions for Rod? I see none. Thank you for testifying.

ROD JOHNSON: Thank you.

SENATOR SCHROCK: One more opponent? Is this the last opponent? Two more.

GREG BAXTER: Good afternoon, Senator Schrock, committee members. Appreciate the opportunity to be able to come to this table and speak to you as an individual. I'm Greg Baxter from Grand Island. Make no mistake, G-r-e-g B-a-x-t-e-r. I don't want to let that pass this time. I'm

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here as a third-generation beef producer in the state of Nebraska. My grandfather founded our company in 1935 on the west edge of Grand Island, and I mean 30 feet from Grand Island, literally on the city limits, which it's an understatement to say that that brings up some interesting challenges at times, politically. With that being said, I would also say that the challenges we have very willingly stepped to the table and met every single one of them. I have great concern with this particular bill and I don't want to be redundant and highlight several of the points that have been brought up by the previous opponents to this point, but I would like to point out a couple of specific items, one of which Duane spoke to was this requirement would, in effect, in my opinion, make the system operate much less efficiently from the standpoint that if we do approve LB 658 and bring that into law, any time there are modifications which may be necessary in order for an operation or a facility to meet new regulations; I'm not talking about adding on to or trying to feed more cattle, make our operation larger; I mean with the existing operation we have, in order for us to expand our facilities, in order to meet and comply with requirement updates and changes to the law, that that would, that act in itself would bring our entire permit up for public scrutiny. Now, I don't need to go into great detail. I think every one of you could appreciate being 30 feet from the city of Grand Island. That in itself can cause a tremendous amount of problems. The domino effect is incredible. I have...I can gladly say only fielded one complaint in ten years that actually got to the point where I needed to address it with the individual. But in our public we have several people, and I don't mean to speak derogatorily or offensively, there are several people in the public today which quite frankly have no education in order to back up some of the claims and accusations and assumptions that are made. And the case I would cite, we were doing this exact process that I'm speaking to, making modifications about three years ago to one of our holding facilities purely in order to comply with new regulations. It was separating waste water and fresh water runoff off of the field; that's all we were doing is creating that separation and making a very definite, separate holding system. And this did get all the way to the EPA and the DEQ because this individual, even though I attempted to explain the situation, it just snowballed and got bigger and bigger. The DEQ representative, which I did

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speaking with, contacted me, solved the situation, asked me what we are doing and I explained exactly what we were doing. And his words were, don't worry about it, I just drove by it and I can see that is exactly what you were doing. So there are many, many operations, by far the majority of the operations in the state of Nebraska that do their level best to comply with every regulation that is in the law today. I would hate to see that we, because of a few rare instances, be it hydraulics that caused some of the issues down from your home country, Senator Schrock, or whatever the case may be. I would hate to see that because of some very localized issues that we change a state law that would affect every single beef producer in this state. I don't have any other statements, but I would sure invite any questions that any of you may have of me.

SENATOR SCHROCK: Thank you, Greg. Questions? Senator Louden.

SENATOR LOUDEN: Yeah, Mr. Baxter, is that right?

GREG BAXTER: Yes.

SENATOR LOUDEN: You fed cattle all your life, or...

GREG BAXTER: Yes, I have.

SENATOR LOUDEN: Well, we have got some handouts here and it mentioned that a 1,000-pound animal is 60 pounds of manure a day. I've been in the cattle business all my life, too. In other words then, 100 head of cattle would have three ton...or, yeah, 3,000 pounds, or 6,000 pounds would be three ton of manure a day. Is that correct? Is that a lot of bull?

GREG BAXTER: I would say of the 102 pens of cattle we have at our facility with just shy of 20,000 head on feed, the highest consumption we have in our entire facility at any given time might hit 42 pounds. Now, if we can turn 42 pounds in to 60 pounds out, I was always told raisins in, raisins out. That doesn't equate very good.

SENATOR LOUDEN: Okay, good enough, because we always figured a ton to the 100 head when we feed hay out on the range, and that's...you can't get...like you say, you can't

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get any more out, so. That's what I wondered. I just...like I say, I thought it was maybe a lot of bull here. (Laughter) Thank you.

SENATOR SCHROCK: But if I might shed a little light on the subject matter, now they also drink water and if you are going to weigh the manure wet or dry it's going to make a difference, and so...

GREG BAXTER: If you hydrate it, that will make a difference.

SENATOR SCHROCK: ...so I think you can figure this any way you want to now. I don't want to get involved in the middle of your intellectual conversation here on the waste product of the livestock, but...

SENATOR LOUDEN: Sixty pounds.

SENATOR SCHROCK: All right. But they can drink, what, how many gallon a water a day, Greg?

GREG BAXTER: What day of the year?

SENATOR SCHROCK: Well, all right. So.

GREG BAXTER: Any other questions?

SENATOR SCHROCK: Other questions? Thank you, Greg.

GREG BAXTER: Thank you very much.

SENATOR SCHROCK: Appreciate you being here. Next opponent. Is this the last opponent? We're...that 40 minutes has evaporated.

WILLIAM BEVANS: Okay. My name is Bill Bevans, William Bevans, B-e-v-a-n-s. I'm a turkey grower from Waverly, Nebraska. I'm here today representing the Nebraska Turkey Growers and the Nebraska Poultry industries. And I'm speaking as an opponent to LB 658. And my main point I want to make today is that you're probably all aware that Congressman Osborne is actively supporting, lending his time and efforts to what he's calling the livestock initiative in Nebraska, trying to promote the idea that livestock is an

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important industry to this state. And I was here a week or so ago testifying for LB 404 which provides a tax incentive for construction of new livestock facilities. And I made the point then that while I'm participating and supporting and doing whatever I can to support the livestock initiative, and that's wonderful, but to this point LB 404 is the only concrete economic incentive that I've seen come across that is aimed at giving economic incentive to an important industry in this state. At the same time, we provide economic incentives to big non-ag companies to come into the state to provide jobs. We're even providing incentives to ethanol production in this state, and at the same time the corn growers tell me that their first number one customer is the livestock industry. And in Nebraska, and we all like to talk about value-added products. That's what we need in Nebraska. Well, in Nebraska value-added means taking our corn and soybean, feeding it to livestock, and then processing that livestock and food products that come from it--that's value-added. It's a natural for Nebraska. So all I'm suggesting is that in all these bills that come before you, be consistent and be livestock-friendly. We have a good record of doing things well in the livestock industry. And just as an aside almost, I would point out also that...I'm in the turkey industry...7,500 turkeys doesn't produce anything near the pile that 5,000 cattle do. I heard Senator Schrock state earlier in this hearing that we are dealing with declining hog numbers. Dairies have come and tried to set up in this state and have decided to go elsewhere. I don't know exactly what's happening to the cattle numbers, but poultry industry isn't growing either. And we need to do what we can to support this important industry in our state. My second point is the main issues of efficiency have been made about how you handle all these individual permits. That's one issue and DEQ can handle that however they handle it, but by providing or requiring individual hearings on each and every one of these permits, my personal fear is...and I just came back from the National Turkey Federation where we spent way, way too many hours, days actually, talking about the threat to our industry from the animal welfare advocates who have tremendous access to power and money--huge amounts of money. We're trying to run a promotional campaign for the turkey industry, retail advertising campaign, and we're working with a budget of \$3 million. Any one of those animal welfare organizations, you know, they're talking

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\$40 million, \$50 million that they have at their disposal to create the other side of the story. And it was also pointed out that these groups are closely allied with the radical environmental groups. And I hate to go there because in this state we're all pretty middle ground, and if you start saying that somebody is really out to get you, you sound a little paranoid. But I'm starting to get a little paranoid because I'm afraid that's what's going to happen with these individual hearings is it gives those people, and we have had people come to the DEQ hearings, or the EQC hearings, and testify that we're here from California, you know, so they're watching what we do here. And I'm afraid that the individual hearings will give these people whose main objective would be to simply to put us out of business, a chance to pick us off one at a time, to promote opposition in individual communities against an individual operator, and have the opportunity to beat up on a feeder, where if we went through the process and had a general permit and have DEQ run through the application, the opportunities as Mr. Head and Ron had pointed out, the application requires DEQ to put the same criteria on every application. It's not like an individual hearing is different than an individual application. It's just the hearing process. And that's my concern and I'll end there.

SENATOR SCHROCK: Thank you, Bill. Are there questions? All right. This is the last opponent? Is there neutral testimony? Senator Preister, you're authorized to close. I have a record correction. Joan Harbeson did not write in support of LB 351; she did write in support of LB 658 and LB 191. Sorry about that.

SENATOR PREISTER: Senator Schrock, I'll waive closing since I've just been called over to the Revenue Committee and open, if it's okay, on LB 191.

SENATOR SCHROCK: Yes.

LB 191

SENATOR PREISTER: Chairman Schrock, members of the Natural Resources Committee, my name is Don Preister, P-r-e-i-s-t-e-r. I'm here as the primary introducer of LB 191 which allows local government bodies to set more

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stringent financial assurance requirements than those imposed by the director of the Department of Environmental Quality. Nebraska Statute 81-1505 (21)(a) currently requires the EQC to establish financial assurance requirements for new or renewed licenses or permits under the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act. The NDEQ has acted to require financial assurances under the Solid Waste Management Act and for several programs under the Environmental Protection Act. However, it has failed to require any kind of financial assurance requirements for any size animal feeding operation. This would grant government bodies the authority to enact such protections if they felt it necessary to protect their local natural resources. It seems appropriate to provide an optional, and I underscore optional, tool for local government to use to protect their taxpaying citizens from paying the cleanup cost price tag, should there be some. These local financial assurance protections, if enacted, would require the polluter to pay any costs of cleanup, rather than require community members of Nebraska taxpayers to pick up the cleanup cost. I would be happy to entertain any questions.

SENATOR SCHROCK: Questions for Senator Preister? Senator Smith.

SENATOR SMITH: There was a statement made last week in this committee, I can't remember exactly which bill it was, but that natural science should trump political science in issues...environmental science, actual scientific evidence, should trump political science. Do you agree with that?

SENATOR PREISTER: I'm not going to comment on that because I don't know all the circumstances with the situation. I think to answer your question without trying or seeming to be evasive, I think that we should have good information and it should be based on solid information, yes. However, people call for sound science, but sound science is defined differently by different people and sound science is usually what I agree with rather than real science. So, unbiased science and information I think is the best, yes. But science is, like statistics, often slanted to the individual perspective.

SENATOR SMITH: Okay. And I'll be straight up with you and

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tell you that my concern with LB 191 is that political science would trump sound science, that natural science collected in an objective manner through the council, through DEQ and other means. I mean, it appears to me that if we can't get our way via the DEQ and those most responsible most educated on the issue, then we'll try to keep a project out via city hall or the county board.

SENATOR PREISTER: This bill isn't keeping anybody out. It's just requiring financial assurance in the event. It's like an insurance policy. So it just says if there's contamination, there is some assurance that there's payment by the responsible party rather than the taxpayers at-large, and it's optional. It only gives the authority to the local municipality or political subdivision if they deem it necessary. The state isn't doing it. There's no requirement. It's not mandatory. So I'm...

SENATOR SMITH: But it would boil down to politics more than science.

SENATOR PREISTER: That depends on the local governing body and the people in the community. It's a local control issue and they would make that decision on the local level. Now, it...politics play into much of what we do in life, so I'm not saying that isn't part of that decision, but I would think the local community is what we always say should make the decisions. And this is permissive in allowing them to do that, should they deem it necessary.

SENATOR SMITH: Okay, thank you.

SENATOR PREISTER: You're welcome.

SENATOR SCHROCK: Other questions? Thank you, Senator Preister.

SENATOR PREISTER: And, Senator, I'm going to waive closing because I do need to get back to my committee.

SENATOR SCHROCK: Can I see a show of hands of those who want to testify as proponents? Three. Opponents? Neutral? Neutral testimony? Okay, I'm going to limit proponents to...there's three...three minutes each. I'm going to limit opponents to two minutes each, and when I raise my hand,

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wrap it up.

KENNETH WINSTON: (Exhibit 29) Thank you, Senator Schrock. For the record, my name is Kenneth Winston. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club, and I have written testimony. The last name is spelled W-i-n-s-t-o-n, appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB 191 because we believe that allowing financial assurance requirements is a good idea. We've testified in support of financial assurance requirements in the past. At the present time there is no financial assurance requirements for any size animal feeding operation and there have been documented cases recently of animal feeding operations going out of business and we're concerned about contamination of groundwater, in particular. Recent studies have indicated that the cost of cleanup of a confined animal feeding operation would be approximately \$42,000 per acre, and so because of these costs we are concerned that these costs might be born by taxpayers if there is no financial assurance requirement. And we also believe that local governing bodies have a better understanding of the issues and would ask that the...and the needs of their community, and would therefore encourage the committee to advance LB 191.

SENATOR SCHROCK: Questions for Ken Winston? Senator Hudkins.

SENATOR HUDKINS: Mr. Winston, have we had any county boards or city officials come to the Sierra Club or any of the other environmental organizations asking for this kind of permission?

KENNETH WINSTON: At the present time I'm not aware of any specific county boards coming to these Sierra Club. I'm aware of a situation where there was an abandoned facility in Red Willow County where the county was going to condemn it and then decided not to because of the fact that they would have to take over the...they were going to take...the taxes hadn't been paid and they were going to take over the property and they decided not to because of the fact there was a cleanup cost associated with it. And I believe that land is currently sitting in limbo with no one taking responsibility for it. That was the last that I had heard of it. So there...we do believe that there are some

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problems that haven't been resolved in this particular area.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: And how would this bill address that issue?

KENNETH WINSTON: Well, that particular issue, because of the fact that that happened in the past, this particular issue would not have been addressed by that. But for prospective cases, if someone went out of business, if they had provided some sort of financial assurances, then there would be a fund there or some kind of insurance to pay for the cost of cleanup, so it wouldn't just sit there abandoned without anyone taking responsibility for it.

SENATOR SMITH: So conceivably, if I understand this correctly, and I'm still pretty new to this, the Environmental Quality Council currently can recommend financial assurance requirements. Is that accurate?

KENNETH WINSTON: Yes, and they do in almost all other areas of the law, as Senator Preister indicated.

SENATOR SMITH: And so if the council recommended that it was not necessary, but a...you're arguing that a city council or a county board could still have the authority to override that.

KENNETH WINSTON: I'm not saying that they would override it. It would allow them to make a determination based upon the needs of their particular community.

SENATOR SMITH: Therefore, overriding the recommendations of the council.

KENNETH WINSTON: Well, I think...I once sat on a school board and I always felt like I had a better idea of what happened in my community than the people at the Legislature did. Now, maybe that was arrogant of me, but I just felt like I had a better handle on what was going on in the schools in the community that I had visited, than the senators who were from all across the state? And I think that's true of most local officials. They have a better

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handle on what's going on in their community than the people in Lincoln do. And so I just think local control in general is a good idea.

SENATOR SMITH: Local control. Okay, thank you.

KENNETH WINSTON: Okay. Be glad to answer any other questions.

SENATOR SCHROCK: Other questions?

SENATOR SMITH: So should the city have the power to have more relaxed rules if it's a local control issue?

KENNETH WINSTON: In general, it doesn't work that way. The state law controls over local law, so the state usually sets the floor and says, okay, this is what you've got to do. And generally, if the state says you have got to do this, occasionally it preempts the local people and says you can't do anything in this area. But...

SENATOR SMITH: But that's okay?

KENNETH WINSTON: It depends upon the situation. I mean, but in my experience, and I've heard many arguments in favor of local control, I tend to believe in local control. I think in a wide variety of areas it provides a much better process of dealing with issues.

SENATOR SMITH: Okay, thanks.

KENNETH WINSTON: You bet.

SENATOR SCHROCK: Other questions? Thank you, Ken.

KENNETH WINSTON: You bet, thank you, Senator Schrock.

SENATOR SCHROCK: Next proponent. While you're sitting down, we have a letter from Joan Harbeson from Elsie, Nebraska, who is a proponent of LB 191. (Exhibit 30) Sorry about that.

GEORGE BRAY: (Exhibit 31) Senator Schrock, members of the committee, my name is George Bray, G-e-o-r-g-e B-r-a-y. And I have a letter that I would like to present on behalf of

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the Great Plains Environmental Law Center. Steve Virgil, the executive director, couldn't be here today. I'll read the first paragraph and then submit the letter for the record. "Please accept this letter in response to Legislative Bill 191. The Great Plains Environmental Law Center supports LB 191. LB 191 adds a significant component to the interests of local control and land use and development. By authorizing the right of local governments to require financial assurance for land uses that threaten to pollute the community, LB 191 protects the communities."

SENATOR SCHROCK: Thank you, George. Are there questions? I guess not. Next proponent.

JIM KNOPIK: (Exhibits 32 and 33) Senator Schrock and members of the Ag Committee (sic), my name is Jim Knopik, K-n-o-p-i-k.

SENATOR SCHROCK: The Natural Resources Committee, Jim, but that's all right; we...

JIM KNOPIK: What did I say?

SENATOR SCHROCK: You said the Ag Committee.

JIM KNOPIK: Oh, the Ag Committee; oh, I'm sorry. Yeah, that's right.

SENATOR SCHROCK: Senator Kremer is not here but some of us think we're more important than the Ag Committee.

JIM KNOPIK: All right. I'll just read mine to get straight to the point and be much clearer maybe this time. I'm here in support of LB 191. Local governments need the right to enact financial assurance protections. There are now many of us across the state who have heard the promises of large livestock operators that say they want to be good neighbors. I guess we didn't pay close enough attention to those words. "Want to" were the two words that we took for granted. Like most of rural Nebraskans, in the beginning I believed all those lies about "environmentally friendly," and "sound science," and "good fertilizer." Environmentally friendly? I haven't seen evidence of this near any concentrated livestock feeding operation. In fact, always the opposite, from very poor and dangerous air quality to surface and

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groundwater contamination. Being downwind or downstream from any of these modern-day state-of-the-art facilities based on sound science, folks have learned that there are many times when sound science and technology fail for those operators. Because of the size of these operations, many of those malfunctions affect others outside their boundaries. The cost of their damages can be seen in the health of neighbors, roads, streams, and rivers. If sound science and modern technology are as good as many promoters say it is, then financial assurance costs should be relatively low, but the truth is that there is no such thing as sound science. I took the following words from an article written by Pete Letheby of Grand Island, Independent. "The goal of sound science adherents is to fog the issue enough so that the public and the media becomes confused about what is really science and what's not. They spend millions of dollars in this endeavor, which often attempts to discredit the most prestigious science groups in the world, including the National Academy of Sciences, American Association for the Advancement of Science, and the National Institutes of Health." The touted efficiency of size and scale and sound science by many promoters of CAFOs is not the economic engine we like to believe it is, but one of the serial killers of society and the environment that regulators refuse to apprehend. Because of the issue of size, the history of being poor neighbors, and the large body of public research that indicates CAFOs are potential health problems, I urge you to pass LB 191. Thank you.

SENATOR SCHROCK: Thank you, Jim. Questions for Jim? Appreciate you being with us, Jim.

JIM KNOPIK: Thanks.

SENATOR SCHROCK: Is that the last proponent? Now we will move into opponent testimony and I would ask you to keep your comments to about two minutes each.

GREG BAXTER: Thank you, again, Senator. Any of you that know me personally, that would be a tremendous fete for me to stay under two minutes. I'll rattle through my points here. I've got a pretty lengthy list. Forgive me if I'm going too quick. You are welcome to ask any questions following. LB 191...and by the way, I'm Greg Baxter, B-a-x-t-e-r. I am here representing not only myself and our

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operation interests as an individual, but also on behalf of Nebraska Cattlemen Association. LB 191 we are adamantly opposed to. This bill invites many different opportunities and many different directions that allow several things to happen. It does allow individual counties to promulgate--counties and communities, to promulgate or create ambiguous new rules, both bond assurity requirements as well as environmental requirements, on a case-by-case basis, thereby it is very discriminatory in nature and the potential is horrendous for the impact it could have on the industry. I would contend that the statement made earlier that industry tends to gravitate toward low-income and minority housing, I would contend that it is the other way around quite frequently. If we look at the ag communities--Greeley, Grand Island, Columbus, Lexington, Omaha, it goes on and on and on. These are communities in the heartland of American that I will guarantee you the industry, agriculture, established itself, made that community, and has built it from the ground up. And the community and the population has gravitated toward, for whatever reason, toward that source of income or the proximity to where their work is. The "in my backyard" statement made earlier, I have experienced that. I would say quite frequently we'll find that citizens in communities with the "in my backyard" philosophy tend to be also some of the more politically motivated and activated, as well as, unfortunately, some of the more radical, uninformed individuals that we have in society. LB 351, mentioned earlier, creates the disillusion, in my opinion, of an ag representation of the council. LB 658, discussed earlier, invites the public scrutiny, slows the progress and the process for operations such as ours to comply with the law. I feel that this bill, LB 191, is a vehicle existing grossly in urban sprawl, permitting the existing operations to be forced out of business, financially forced out of business, for lack of ability to be able to meet the requirements specifically of the assurity bonds. The urban sprawl will continue to reduce and replace the importance of ag in our great state of Nebraska. This is a huge concern to me, and make no mistakes about it, the political science that we are speaking to aggressively pursues the sprawl issue. In summary, Congressman Osborne, mentioned just before I came to the desk, has developed or created the Coalition for Preservation of Agriculture in Nebraska, realizes and is very open and vocal and spotlights the fact that today there

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is a huge disconnection from our people in the urban environment to the people in the ag or the rural environment and the importance of agriculture plays to our state's economy. I would be happy to answer questions you might have.

SENATOR SCHROCK: Thank you, Greg. Are there questions? We appreciate you being with us.

GREG BAXTER: Thank you.

SENATOR SCHROCK: I have a letter here from the State Chamber in opposition to LB 191, signed by Barry Kennedy; and a letter from the Nebraska Federation of Independent Business, signed by Robert Hallstrom, opposition. (Exhibits 34 and 35) Yes.

MARK MCGUIRE: Thank you, Senator Schrock, members of the committee. My name is Mark McGuire, M-a-r-k, McGuire, M-c-G-u-i-r-e. I appear before as an attorney and registered lobbyist for Crow Butte Resources located in Crawford. I testified here a couple other times so far this session. Crow Butte Resources is the uranium mining project up by Crawford. I want to point out, and let's just cut to the quick here and I'll save my canned remarks, LB 191 does not just pertain to feedlots. It specifically would cover our operation in Crawford. I feel really urgent to testify and to bring to your attention the fact we're already under dual bonding requirements, if you will. For our operation, we currently have a bond slightly in excess of \$16 million. To get that requires real assets of obviously more than \$16 million. The bonding process itself is already governed by Title 122 of the DEQ. It is also when we go through another application process, an approval process by the U.S. Nuclear Regulatory Commission source, and the \$16 was determined to become effective this year; before that it was 14-something. What happens is they determined what our activities are going to be for the following year and the bond goes up accordingly. What this would provide is that the county commissioners of Dawes County could say \$16 million isn't enough, even though you've gone through the regulatory hoops and the justification for it with two entities that are specifically trained in the area of making these evaluations. But the Dawes County commissioners could say, well, let's add another ten or 16 or whatever. I'm not

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suggesting we have anything but a good relationship with the Dawes County commissioners, but the fact of life is the way this is written, we would be covered. We intend to expand in years coming up and perhaps be in one or two other counties who also under this could impose whatever bonding requirement they wanted. There's no standards, no criteria, in contrast to a myriad of standards we have to face at both the DEQ level and the Nuclear Regulatory Commission. I'm not whining or complaining about the bonding; it serves a very important social function. It's there; it's accepted. I would say that the interests of the state of Nebraska and the citizens up in that area, Dawes County, in Senator Loudon's area, are well protected by the bond that is already required and does exist. I would ask the indefinitely postponement of LB 191 and would be happy to answer any questions.

SENATOR SCHROCK: Thank you, Mr. McGuire. Any questions for Mark? Appreciate you being with us.

MARK MCGUIRE: Thank you.

SENATOR SCHROCK: Next opponent, please.

LARRY LINDER: (Exhibit 36) Good afternoon, Senator Schrock, members of the Natural Resources Committee. My name is Larry Linder, L-i-n-d-e-r. I'm an environmental compliance specialist for the Nebraska Public Power District and I'm here testifying in opposition to LB 191 on behalf of the Nebraska Public Power District and the Nebraska Power Association. And I will keep this short because we are getting late in the day. We believe the development of the environmental rules and regulations in Nebraska must be a process in which the decisions are based on evaluation of risk and facts and unbiased science. To do so effectively and consistently requires that adequate resources, procedures, and information are available. We think the regulation process that's in place now provides those resources and those means to do that. While many departmental regulations are developed for statewide protection, they do allow opportunities to address local or area issues specifically, as well. If each and every county board or city council in Nebraska were to impose more stringent rules, and I think if you read the bill closely it's not just financial assurance; it talks about more

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stringent rules, as well. We believe there could many resulting problems from that. One, it complicates and adds unnecessary additional regulatory burden to the already established process that people are familiar with. Two, it potentially circumvents the established process that are already there. I can get my permits as required by federal or state law, and as Senator Smith mentioned earlier, what happens then if the next level and the next level keeps going down. Third, if you look at that, 93 counties in Nebraska, that's 93 potential additional sets of regulations, requirements, or financial assurances. It also talks about city councils, which however many municipalities there are, 300 and some in Nebraska, it just keeps adding to that burden. And we're not sure that's really necessary or serves any purpose. The fourth point is one that no one has written right now. It doesn't provide any formal process for doing these additional regulations or financial assurances. And it really doesn't indicate whether the new rules that might be passed would apply to existing facilities or just new facilities, and that's kind of a big question for existing businesses and new business as you look ahead. And basically for these reasons, NPPD and the NPA oppose LB 191. We think the processes already exist through the EQC and the NDEQ to develop the rules and regulations necessary in Nebraska and they allow for area and local issues to be addressed, which has been done in the past and it would just further complicate a regulatory process in the meantime. With that, I would be willing to answer any questions.

SENATOR STUHR: Okay, thank you, Mr. Linder. Are there questions from the committee? If not, thank you very much for coming. Are there other opponents? Welcome.

ROD JOHNSON: (Exhibit 37) Senator Stuhr and committee members, for the record my name is Rod Johnson, J-o-h-n-s-o-n. I'm the executive director of the Nebraska Pork Producers Association, representing our producers in opposition to LB 191. Our industry, which is the livestock industry in general, is over a \$6 billion industry in the state of Nebraska, and the livestock industry in general works with the Nebraska Department of Environmental Quality for years under the regulations that are spelled out at this time. It is our feeling that the staff at the DEQ has assembled a group of qualified experts in the protection of

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the environment as it relates to livestock waste and the control of the livestock industry. Local control has been a key word for a lot of years but the basically, the local communities have established their control over the location of facilities. But we still feel that the experts at the DEQ are the people that when it comes to the development and the design of waste control systems, they are the people that we should be turning to and they are the ones that have the ability to determine the rules and regulations and the need for financial assurance and everything else that goes along with this. So with this in mind, we feel that LB 191 is not in the best interest of our industry and we would ask that you kill this bill at this point and let sound science, as developed through the DEQ, make these decisions rather than the, in many cases, the emotions that are present in a lot of the local decisions out there. With that I would answer any questions.

SENATOR STUHR: Okay, thank you, Mr. Johnson. Are there any questions? If not, thank you very much. Next opponent.

CRAIG HEAD: (Exhibit 38) I do have some copies here. Good afternoon, Senator Stuhr and members of the committee. My name is Craig Head; that's C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau Federation, here today on behalf of the organization in opposition to LB 191. I'm not going to rehash the things that have been said before; I'll keep this short. We're very concerned about the idea or the premise of trying to give entities that don't have the scientific expertise the ability to create regulations, in this case on the livestock industry and that's what we think this bill would promote. In addition to that, we would have that same concern as it relates to financial assurance requirements. And what you're being passed around is a report. Back in 1997, I believe, 1998, the Legislature authorized a task force to look at the issue of financial assurance on the livestock industry. And basically, the findings were that there was no need at that point in time to have that type of requirement. We would be concerned about knowing that there...we haven't seen anything change since that point in time that would justify financial assurance in our minds, and furthermore, we would hate to see the DEQ subverted in that process and give that authority to a local entity when we know there's not a problem out there. So with that, that

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would conclude my testimony and appreciate your time.

SENATOR SCHROCK: Thank you, Craig. Questions? Thank you, Senator Stuhr, for presiding while I took a break. I have a letter of opposition from the Nebraska Economic Developers Association signed by Roberta Pinkerton. (Exhibit 39)

KORBY GILBERTSON: Good afternoon, Chairman Schrock, members of the committee. For the record, my name is Korby Gilbertson; that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, and I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association and the Nebraska State Home Builders Association in opposition to LB 191. I would just like to keep this short, echo the previous testimony, and reiterate the fear that the Nebraska Realtors and the Home Builders have is that there is a great potential for some misguided regulations under LB 191, and while the local municipalities may have...may be well-meaning in creating these regulations, we do not feel that they are probably qualified to be creating them. With that, I would take any questions.

SENATOR SCHROCK: Thank you, Korby. Questions? Next opponent?

KORBY GILBERTSON: Thank you.

SENATOR SCHROCK: Is this the last opponent? Okay, don't be bashful. You don't have to be last.

TOM GUSTAFSON: Senator Schrock and members of the Natural Resources Committee, my name is Tom Gustafson, G-u-s-t-a-f-s-o-n. I'm from Wakefield, Nebraska, and I'm representing the Michael Foods Egg Products Company at Wakefield.

SENATOR SCHROCK: What products company?

TOM GUSTAFSON: Egg Products Company at Wakefield.

SENATOR SCHROCK: Eggs?

TOM GUSTAFSON: Yes.

SENATOR SCHROCK: Okay.

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TOM GUSTAFSON: At Wakefield, Nebraska, and Bloomfield, Nebraska.

SENATOR SCHROCK: All right.

TOM GUSTAFSON: We are opposed to this bill. We feel that the state needs a standard policy on payment assurance across the board if we are to have one at all. I guess we would probably be opposed to a state one, too, but we are especially opposed to a local one that's administered by the planning and zoning administrations and/or the municipalities. We feel that planning and zoning administrations and municipalities would be completely subject to local politics. There would be a lot of favoritism, no science. This whole thing would be very negative to economic development in our eyes. We would be very cautious in establishing any more operations in Nebraska if this were passed. Not saying we wouldn't, but I'm saying that we would take an awfully good look. So we are opposed.

SENATOR SCHROCK: Thank you, Tom. Any questions? I think we can unscramble that testimony. (Laughter) Next opponent.

MIKE MOSTEK: Mr. Chairman and members of the committee, Mike Mostek, M-o-s-t-e-k. I'm an attorney in private practice in Omaha. I'm appearing as a volunteer today on behalf of the Nebraska Industrial Council on Environment, who I spoke about in earlier testimony. The Nebraska Industrial Council on Environment is opposed to this legislation. I won't repeat arguments that have already been made. One thing that I wanted to point out is I'm not sure that the local cities and counties are prohibited from making more stringent law now. And I haven't researched that issue, but I was hoping Senator Preister might cover that in his introduction. I don't know the answer to that question but I think it's a legitimate question to be asked. I'm not sure that they're prohibited in any way from doing it now. I'm always willing to be educated though. The other point is kind of a legal point. If we see where this change is inserted at the end of the statute, it's page 19 of LB 191, you know, the change is under subsection (e) and it says nothing in this subsection prohibits the county

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board or any county or city council, et cetera, et cetera, from adopting regulations. But then there's a sentence after that that says this subsection shall apply to the hazardous waste treatment storage and disposal facilities which have received interim status. So it's just a little bit confusing there. The other thing I would say, I agree and underscore everything all the opponents have said so far. And the other thing I would add is that if we were to ever have a provision like this allowing more stringent regulations on the local level, it ought to be subject to some sort of test or justification, certainly subject to standards, but also subject to a test or justification similar to that that's suggested in LB 731 by Senator Bourne. So NICE urges the committee to not advance this bill, please.

SENATOR SCHROCK: Thank you, Mike. Are there questions? Next opponent. And we have one opponent left after this, I believe, is that correct? Got your whoopee cushion started there and we're in good shape.

WILLIAM BEVANS: This chair is made for big people. My name is, again, is William Bevans, B-e-v-a-n-s, turkey grower from Waverly, Nebraska. I'm again representing the Nebraska Turkey Growers and the Nebraska Poultry industries. My first argument is to remind you what I said when I was up here a few minutes ago in that livestock feeding is good for Nebraska. You have the opportunity with your committee to, in one swoop, do a very simple, economic incentive for the livestock industry, and that is simply not to impose a surety bond on livestock feeding. I was interested to hear Mr. McGuire say that the uranium industry is required, and I believe he said by DEQ, by Nebraska, to put up that surety bond. So there has been a determination that in the uranium business we're going to require a bond for cleanup. The current law allows the DEQ, the EQC to impose surety requirements on the industries covered by the act. It also permits the EQC to exempt classes of permittees from surety provisions if it can find that no significant risk to public health and welfare exists. So I suggest to you that if they required a surety bond in the uranium industry and they haven't in the livestock feeding business, they haven't found the necessary need for surety bonds in the livestock feeding industry. And again, I would just suggest to you that we're talking about manure; we're not talking about

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nuclear waste; it's not toxic. We know how to clean it up; we can take care of it. My second point goes to the local control which has been mentioned a couple times. The problem with local control in this day and age is simply what has been stated before, and that's the disconnect by most of our population, even in Nebraska. We're generations removed from the farm and the feeding livestock and there's that disconnect from where and how our food is produced. And so when you get good intentioned people trying to make rules in this area, you're going to have problems in the livestock feeding industry. And again, the goal is to keep livestock feeding in the state. The third point would be that I just think as a policy matter it would just create a hodgepodge situation if you required every...or allowed every county and city to impose their own standards on what livestock, what kind of a surety bond would be required for a livestock feeding operation. And so you would end up having, shopping around for the right area to put your feeding operation. It would run some operations out of business and allow it somewhere else. But it would just be not uniform, unfair, and I don't think it would be a good policy. I think that ends my remarks.

SENATOR SCHROCK: Thank you, William. Questions? Next opponent? This completes opponent testimony. Do we have neutral testimony? Senator Preister has waived closing and that will close the hearing on LB 191. And I see Senator Bourne is here. LB 731. Senator Bourne, you're authorized to open.

LB 731

SENATOR BOURNE: Good afternoon, Senator Schrock and members of the Natural Resources Committee. My name is Pat Bourne. I represent the 8th Legislative District in Omaha, here today to introduce Legislative Bill 731. LB 731 would prohibit the Department of Environmental Quality from adopting any rules or regs to carry out the provisions of the Environmental Protection Act that are more stringent than federal law or federal rules and regs. This bill is not a total prohibition. I do recognize that one size does not fit all and that there may be a need for our state's rules and regs to go beyond those required under federal law. LB 731 allows for more stringent standards if those

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standards are directed by the Legislature or if the council can justify the need to adopt a more stringent standard. Under LB 731, the council could adopt a more stringent regulation if it does the following: Prior to the public hearing, the council must provide a written statement that clearly identified the more stringent rule, explains why it is necessary to protect the public health or environment and why the federal rule is inadequate, specifies that the technology is available to carry out the rule, and includes a financial impact statement that details the impact the adoption of the rule would have on the affected parties. At least 30 states have provisions in their statutes with respect to limiting the adoption of more stringent rules and regs. In fact, Nebraska already prohibits the adoption of more stringent regulations with respect to the Safe Drinking Water Act. This bill simply expands that limitation to all standards adopted pursuant to the Environmental Protection Act. As you may be aware, the Department of Environmental Quality recently proposed revisions to the federal clean air standards. The department's most recent draft of new source review regulations contains provisions that are more stringent than current federal requirements. It is my understanding that these provisions could impact our electric utility system's reliability and adversely affect our state's economic competitiveness. In addition, the proposed revisions could have a financial impact in the hundreds of millions of dollars, resulting in increased electricity costs to consumers--Nebraskans. There is no indication that these changes are necessary or would provide any environmental benefits to Nebraska. Given the potential impact of DEQ's proposed revision, I believe it represents a major policy decision for the state. This bill is not intended to be anti-environment; this bill is not intended to put undue restrictions on local zoning; and this bill is not intended to be retroactive with respect to rules and regs already adopted. This bill is intended to keep the major policy decisions where they belong, and that is in the Legislature. I'm not singling out DEQ. I have introduced another bill that also addresses the issue of agencies going beyond what I perceive as their power in adopting rules and regs. As term limits nears it is imperative that this Legislature take action to prevent major policy decisions from being made by agencies. In order to keep this as a government for the people, we must ensure that the laws are set by those accountable to the people, not by agency rules

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and regulations. LB 731 does not hamper DEQ from adopting necessary standards; it simply requires the department to demonstrate that such standards are necessary for the betterment of Nebraska. Thank you for your time, and I do urge your advancement of this bill.

SENATOR SCHROCK: Thank you, Senator Bourne. Questions?
Senator Stuhr.

SENATOR STUHR: Senator Bourne, have you ever been involved and sat in on the hearings for rules and regulations?

SENATOR BOURNE: I have.

SENATOR STUHR: Is it a long process?

SENATOR BOURNE: The one that I saw, Senator Stuhr, was basically a clerk in a room over at the State Office Building and you would come up and articulate your comments into a tape recorder. That is my experience with the rule and reg-making process, and I believe that's inadequate.

SENATOR STUHR: Yes, I would agree. Our staff has also been involved in some rule and regulations, and it's been probably attending 50 to 60 hours of that process. So, you know, sometimes it is very complete and sometimes it isn't evidently.

SENATOR BOURNE: Yes. And sometimes it isn't, and that's what I'm trying to do with this series of bills. I do think it's of vital importance that we resolve this issue in two years before the first group leaves the Legislature.

SENATOR STUHR: Okay, thank you.

SENATOR SCHROCK: Other questions for Senator Bourne?
Senator Smith.

SENATOR SMITH: Well, I think this issue, as we've discussed before, has a lot of merit. I mean, I have a concern that we have a lot of agencies, creatures of state government, that are becoming activists on their given issues and it concerns me a great deal, so I appreciate your attention to the matter.

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SENATOR BOURNE: Thank you.

SENATOR SCHROCK: Other questions? Senator Bourne, was there an event that brought you to bring this bill to us or was there a person or...?

SENATOR BOURNE: No. This bill I introduced on my own behalf. I became aware of this particular situation regarding the DEQ and the more stringent rules--more stringent than the federal standards. I became aware of that from a newspaper article that then kind of piqued my interest and I inquired as to the issue. And what I discovered was that most of the states around us adopted the federal standards by reference, meaning we just simply adopt the federal standards and end of story. Nebraska, on the other hand, took it upon themselves to make these rules and regs more stringent, and they're proposed at this time. And so as I looked into it, I uncovered that those costs of the more stringent rule and reg could be \$400 million to \$500 million in additional monies that the ratepayers have to pay. And we're in a time where we're trying to stimulate economic development in this state, and I think that has to be weighed in in the determination of whether or not we adopt stricter standards, and I don't believe that that's part of the equation today.

SENATOR SCHROCK: Thank you. Other questions?

SENATOR SMITH: I'm sorry.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: So you would say the major difference that you're proposing is probably the financial impact statement on the affected parties.

SENATOR BOURNE: I think that if an agency...there is a mechanism in here where an agency could, or the agency could adopt more stringent rules and regs, but it would have to be justified.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you.

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SENATOR BOURNE: Thank you. I will waive closing; I'm going to head back to the Judiciary Committee.

SENATOR SCHROCK: All right.

SENATOR BOURNE: Thank you.

SENATOR SCHROCK: Can we see a show of hands of those who want to testify as proponents? Opponents? And neutral? Okay, we could probably do about ten minutes of each. First proponent, please. That means you've got a couple of minutes with little change to spare.

LARRY LINDER: (Exhibit 40) Good afternoon again, Senator Schrock, members of the committee. Again, my name is Larry Linder, L-i-n-d-e-r. I'm an environmental compliance specialist with Nebraska Public Power District, and I am here today to testify in support of LB 731 on behalf of Nebraska Public Power District and the Nebraska Power Association. I will hand out some testimony. It has some information in it, but I'll summarize real quick here. NPPD and the NPA understand the state has a right to pass more stringent rules under the current process and we believe the changes as proposed in LB 731 do not prohibit or take away from that ability to do so. NPPD and the NPA believe that when more stringent rules are proposed or considered, that a sound basis of need and impacts must be included as part of that consideration, not only to protect the environment but also to ensure they do not detract from economic development opportunities and growth in Nebraska. LB 731 would formally establish the requirements basically to provide information and identify what type of information must be provided to the EQC and public so that informed decisions can be made. At the same time, the provisions of LB 731 we believe would help ensure that unnecessary and overburdensome rules and regulations that may or may not provide greater protection to the environment are not imposed on the regulated business communities. We believe the provisions as proposed in LB 731 are reasonable to maintain a balance, and that is a balance that has to be maintained between protection of the environment and the economic development in Nebraska. I guess the more I look at this in its simplest terms, what is proposed boils down to a process improvement. Any decision maker, whether it be me or my management or you or the members of the EQC are going to make decisions, I think

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it's...it makes it more consistent and a better and effective process if you lay out what are the information requirements. You need to make sure you at least have those minimum requirements in hand as you start moving forward in the process. And I think the things are reasonable that are in LB 731.

SENATOR SCHROCK: Thank you, Larry. Are there questions?

LARRY LINDER: Any questions?

SENATOR SCHROCK: Appreciate you being with us.

LARRY LINDER: Okay, thank you very much.

SENATOR SCHROCK: (Exhibits 41 and 42) We have letters in support from the Nebraska Federation of Independent Business signed by Robert Hallstrom, and we have a letter of support signed by Barry Kennedy from the State Chamber of Commerce. Korby.

KORBY GILBERTSON: Chairman Schrock, members of the committee, for the record my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska State Home Builders Association in support of LB 731. When the Home Builders were reviewing this, they thought that the four things that are required for NDEQ to establish new regulations are very reasonable and, in short, those are, why the rule is necessary, why the federal regulation is not sufficient, looking at the availability of technology, and finally, the financial impact. The Home Builders feel that those four things are very reasonable for NDEQ to consider any time that they're considering a new regulation. And for those reasons we would ask that you would support LB 731.

SENATOR SCHROCK: Thank you, Korby. Did you say LB 731, not LB 102?

KORBY GILBERTSON: I definitely did. (Laugh)

SENATOR SCHROCK: All right, thank you very much.

KORBY GILBERTSON: Thank you.

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SENATOR SCHROCK: Next proponent. Proponent testimony? If you are going to testify as a proponent, please come forward to the front row.

MIKE MOSTEK: (Exhibit 43) Mike Mostek, M-o-s-t-e-k, Omaha, Nebraska, appearing on behalf of the Nebraska Industrial Council on Environment, also known as NICE. NICE supports LB 731. I won't repeat the testimony of the other proponents. I do want to add three or four additional points for consideration. One is to remember that federal regulations are studied and worked on for many years by the EPA before they are ever promulgated. They have provisions for public comments; those are nationwide. They have the benefit of all these public comments. Some of them they accept; some of them they reject. But in each case, they end up with a thick publication in the federal register. This particular one that came out December 31, 2002, has to do with the NSR regulations--air regulations that Senator Bourne mentioned. And we have the federal bureaucracy at work for us and I think that it would be silly in some respect for us to think that we can improve upon in every instance what the EPA has done with their very complicated process that they go through. A recent example that we at NICE have been working on is the NSR regulations. I tell my partners repeatedly that the air regulations are more complicated than the tax code, and they don't believe me and they may never believe me, but they truly are very, very complicated. And I can give you one small example that's included in a letter that I would like to provide to the committee. This is a letter that NICE wrote, a committee of people and NICE wrote, and I signed on behalf of NICE, dated November 29, 2004, and it's to Bev Kellison at NDEQ and she is the lady that is primarily responsible, I think, for drafting the new Title 129. And this comments, you can study it, but you'll see in several instances the complaint is that the DEQ is trying to do their best to make the regulations simple and understandable, but on the other hand, they are undoing things that different industries have fought for on the federal level for decades in some instances, and undoing them without necessarily having a good explanation or justification for doing so. A case in point is something called a demand growth exclusion. And the question is, if an industry, whether or not a particular facility would need to go through new source review. Again, it's complicated; I'm not going to get into it. But the

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federal regulations allow the industry to have an exclusion when it goes to predict its actual admissions today versus actual emissions in the future, an exclusion from normal demand growth. And that's allowed in the EPA's regulations for utilities and for all other types of businesses. The problem is that when the EPA wrote their regulation, they punted. And by that I mean they basically said that if you're a business and you have demand growth and you think you are entitled to the exclusion, please come and prove it to us. And there has been a hangup and DEQ has been very good to work with us on all these points and this one in particular where we met with Ms. Kellison. And we've had two meetings and they appeared at the NICE meeting last month; we have regular monthly meetings. And we had more discussions then. But the problem, the hangup is that EPA didn't provide any guidance on how they expect this to be implemented or how a business is supposed to prove its demand growth. So we're working together and our argument to DEQ is, at least do what the EPA did; leave the possibility of the exclusion in there and have the burden on the regulated party to come in and prove their demand growth. And we've gotten into all kinds of esoteric discussions on how does an ethanol plant prove what's demand growth by virtue of the California market versus regular growth. And the point is, it's just too complicated to solve. And I think what EPA has done is the right answer. They said we'll preserve the possibility for this exemption, but it's going to be up to the regulated party to prove they're entitled to it. And there are some feeling that, at the local level, that if we can't get our arms around it, we shouldn't have it in our regulations so it makes it more stringent. In summary, I think that Senator Bourne's proposal is brilliant. It's balanced from the very beginning. I think the requirements and conditions show that it's balanced. There may be cases where we do need more stringent regulations, and that provides for it. We urge you to pass this bill through committee.

SENATOR SCHROCK: Thank you. Questions for Mike? Senator Schmit, I've never known you to me brief on testimony.

LORAN SCHMIT: With your permission, Senator Schrock, I'll submit a letter with the majority of my testimony. I just want to appear today...my name is Loran Schmit and I appear on behalf of a number of ethanol companies...

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SENATOR SCHROCK: Spell that for us, Loran. Not the ethanol companies; your name.

LORAN SCHMIT: S-c-h-m-i-t.

SENATOR SCHROCK: All right, then.

LORAN SCHMIT: Thank you. And I support the bill. I support the agency and what it does. I agree with Senator Bourne that I believe the agency should adopt the federal rules by reference. And there is sufficient latitude in Senator Bourne's bill for those few instances where there needs to be additional kinds of restrictions. I would suggest that the agency is perhaps very, very busy. They have insufficient staff now to do the work that they would like to do, and that if this bill were to become law it would give the agency some guidance that would perhaps reduce their workload. If the agency pursues the other area, I believe the workload is going to become overbearing. I'll answer any questions, Senator.

SENATOR SCHROCK: Questions for Loran? Appreciate you being with us.

LORAN SCHMIT: Thank you, sir.

SENATOR SCHROCK: Next proponent. Next proponent. Opponent testimony. Opponent testimony? I have opposition here from the Sierra Club signed by Laura Krebsbach, and I have opposition from Joan Harbeson from Elsie, Nebraska. Thank you. (Exhibits 44 and 45)

JAREL VINDUSKA: I'm Jarel Vinduska, J-a-r-e-l V-i-n-d-u-s-k-a. I'm here in opposition to this bill. I don't like it at all. It's kind of fascinating being here, listening. You know, sometimes people are for local control; sometimes they're against it; sometimes we're for DEQ control and other times we're against it. But this is about the first time I've ever run into a state senator write a bill that was ceding local control to the federal government. And I don't think it's a good idea. I think local control is always better. And if we just go over the points...and we do specifically that. It's been said that we didn't; that we did leave some latitude for rule change

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at the local level, but I don't think that's the case in the...like in (a) it says it clearly identifies proposed...you must clearly identify proposed rules or regulations that are more restrictive. I think that's done right now. If you go the Environmental Quality Council, they clearly explain it and it also explains why rules and regulations are needed to protect public health. Well, that's also done any time I've been there. And why the federal government is inadequate, if there was...if the EPA was properly regulating some type of problem, I don't think anybody would be proposing any changes in regulations. Generally there is a proposal of a change when a problem is identified. But when we get to (c), there's where we start getting into the real meat of this bill where we're actually trying to stifle local regulations because it says specifically that the technology is available to carry out the rules and regulations. Well, it's not government's obligation to supply industry with technology. If there's a problem with pollution that's truly a problem that we need to address, that's the polluter's job to figure out how to stop the pollution; that isn't government's job. And then we get to (d); that's the real kicker where we go, includes a financial impact statement that details the impact and adoption of such rules and regulations that would affect the affected parties. Well, that's specifically the problem with pollution. It's easy for the polluter to specify the damage that's done to him if he's required to put pollution control devices in place, but the damage is very hard to specify. Like, well, I can give you several examples, but for instance Nebraska gets the distinction of being the second state in the Union for most asthma deaths, and Omaha is number one in the nation for asthma deaths. Well, if at the local level the DEQ or someone else noticed a problem that could be contributing to those deaths, it would be easy for the person producing that problem to specify, oh, this is going to be costly for me to fix this. But then how do you put a cost on the extra diminished health or deaths? You can't do that, so the polluter wins out in that case. Okay, just one more quick example. And since power plants were mentioned, we...our federal rules have become pretty lax here lately on mercury pollution coming out of smoke stacks from power plants. Well, we all know that Nebraska, most of the waters in Nebraska have fish advisories on them for mercury contamination, and...but how do we put a dollar value on what that contamination is. Pregnant women aren't

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supposed to eat fish at all and other people no more than twice a week. But how can we put a dollar value on that? So I'm against this. We need to keep these regulations at the local level where they should be. Thank you.

SENATOR SCHROCK: Thank you, Jarel. Are there questions? Senator Kremer.

SENATOR KREMER: Are you just speaking on your own behalf or are you representing some...?

JAREL VINDUSKA: I'm on my own behalf.

SENATOR KREMER: Okay.

JAREL VINDUSKA: Thank you.

SENATOR SCHROCK: Thank you, Senator Kremer. Next opponent. Is there neutral testimony?

GEORGE BRAY: I was a little late on the gun. Can I do an...?

SENATOR SCHROCK: Do you want to do an opponent testimony?

GEORGE BRAY: One opponent, yes.

SENATOR SCHROCK: Okay. Don't be bashful here. We're...

GEORGE BRAY: (Exhibit 46) Good afternoon, again, Senator Schrock and committee. My name is George Bray, G-e-o-r-g-e B-r-a-y, and I'm here on behalf of the Great Plains Environmental Law Center and I'll just read the opening paragraph of Steve Virgil, the executive director's letter; he cannot be here. "Please accept this letter in response to Legislative Bill 731. The Great Plains Environmental Law Center strongly opposes LB 731 because it significantly limits the ability of citizens of Nebraska to protect the state's unique natural resources and quality of life."

SENATOR SCHROCK: Thank you, George.

GEORGE BRAY: You're welcome.

SENATOR SCHROCK: Are there questions? Did I see another

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opponent hand? Neutral testimony? Excuse me. Do we have a letter in opposition or...? Oh, that's right. I do have a letter in opposition from Jim Knopik on LB 731. He had to leave early so he left written testimony. (Exhibit 47)

MIKE LINDER: Good afternoon, Senator Schrock.

SENATOR SCHROCK: Just a minute. We have a letter of opposition from the Great Plains Center? Great Plains Environmental Law Center signed by Steven Virgil, but that testimony was presented just by George Bray. All right, thank you, Director Linder. How are you?

MIKE LINDER: Thank you, good afternoon, Senator Schrock. Fine, thank you. Members of the committee, my name is Mike Linder. Last name, L-i-n-d-e-r. I'm director of Nebraska Department of Environmental Quality. I would also, rather than read through my notes, I would like to submit a letter to you explaining mostly what I want to point out to the committee is the extensive outreach we do in our regulatory proposals. Senator Bourne mentioned that his appearance before a state agency was before a clerk with a tape recorder. Our...you heard testimony about the Environmental Quality Council hearing our regulatory proposals. Before they ever see a proposal before them, we have done extensive outreach trying to point out to any stakeholder that we can and to the public, provisions and regulations that are going to impact them, whether it be from a change in regulation from state law, changes in federal law, whatever reason is impacting them. We want to get input and try to work through any potential concerns. And you heard testimony about the air quality rules that we put out for that type of comment this fall, and obviously got comments. But what we...that's what we want. We encourage that process and we encourage trying to come to consensus on how to develop these regulations and eventually present them to the Environmental Quality Council. So that's the main message I want to deliver to the committee as you deliberate on this bill. Also, I would...as you look at the bill, I think there are some interpretive issues with what is more stringent than, is our regulation...you heard Mike Mostek explain our efforts to make the federal regulations more clear. And is that being more stringent? I think the impact in that instance he gave you is more stringent, but there are a lot of times when we just try to make sense out

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of that thick federal register that he also showed you. So is just being different more stringent than...or is there some kind of standard that you could put in the language. And also there is a reference to more stringent than a corresponding federal rule. We have some areas where we have programs, for example, the air quality program, where there are national standards for six air pollutants. But in Nebraska you also heard earlier testimony today about the total reduced sulfur standard that was brought to us by citizens in northeastern Nebraska. That is a standard that there is no corresponding federal rule, but it is clearly part of the ambient air standard process. And so in the absence of a corresponding rule, does that mean we can't do anything? So some of those procedural things we would definitely like to work out, but I mostly wanted to be here for questions and to let you know that we do try to solicit information from people that are going to be impacted by regulations. And many of the tests that are set forth in LB 731 we do by discussion and by presentations to the council. So with that, I would be happy to answer any questions.

SENATOR SCHROCK: Questions for Mr. Linder? Senator Stuhr.

SENATOR STUHR: The special provisions that Senator Bourne had in his bill regarding detailing the impact that it might have, I mean is that difficult to do?

MIKE LINDER: The fiscal impact?

SENATOR STUHR: Um-hum.

MIKE LINDER: You may not know right now, anytime an agency develops a regulation, we have a requirement currently to do what you would see as a fiscal impact statement. We have to provide to the Secretary of State at the time the regulations go to public notice, a description of impact on political subdivisions and the affected community. And so this would...we do something similar already; this would be a new kind of an add-on, I guess. It is...it's not a quantitative process that we do now. In other words, we don't put dollar amounts in. It's a narrative description. And I...if that is the similar process, then I don't see a huge change there.

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SENATOR STUHR: Okay.

SENATOR SCHROCK: Other questions? Mike, would you characterize our environmental laws and what you are enforcing regulatory wise, would you characterize them as just meeting federal standards or would you characterize them as being more stringent than federal standards?

MIKE LINDER: Oh, generally speaking I think we're very consistent with the federal government's requirements...

SENATOR SCHROCK: So most of the...

MIKE LINDER: ...across the board. Now, there are instances like we're working through on the air quality regulations where there are differences, and we'll continue to discuss those before we take them to the council. There are some situations like groundwater monitoring on livestock facilities that was already in state statute at the time the federal government adopted the new federal CAFO rule, so we have a provision in our CAFO rules that really is more stringent than the federal government, but it's a provision of state law. So there are a few instances like that, but by and large, in the federally delegated programs we're very similar to the federal government.

SENATOR SCHROCK: Okay, thank you. Other questions? If not, we appreciate you being with us.

MIKE LINDER: Thank you.

SENATOR SCHROCK: We've got a state employee working past 5 o'clock; that's pretty good.

SENATOR KREMER: That one is.

SENATOR SCHROCK: Oh, okay. Well, we have a couple staff people here, too. Well, Barb and Jody don't count.

PETE MCCLYMONT: Senator Schrock and members of the committee, I'm Pete McClymont; last name is spelled M-c-C-l-y-m-o-n-t. I'm representing Nebraska Cattlemen. I recognize...

SENATOR SCHROCK: Where are you from, Pete?

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PETE McCLYMONT: Holdrege.

SENATOR SCHROCK: There you go.

PETE McCLYMONT: I recognize we're all looking at our watches and we want to get out of here so I guarantee you my testimony will be less than two minutes, so. A vast majority of Senator Bourne's LB 731 we approve, we like. We talked with him; he was very open with us and we appreciate that. There are some things in there that we have concerns about, and mainly due to the fact that the Governor just signed into legislation on the fourteenth, a week ago Monday, LB 916 from last year. So I guess what we would like to see is it play out and not change anything this quick. We went through the process with other affected groups in livestock, and with DEQ, and then the Environmental Quality Council approved it, and so I guess out of that we're in a neutral position even though there is much of it what we like and just want to see the whole process that's affected in livestock play out, and then we can determine whether some of this would be good to change.

SENATOR SCHROCK: Thank you, Pete. Appreciate you being with us today. Other...are there questions?

PETE McCLYMONT: Thank you.

SENATOR SCHROCK: If not, and if that is the last testifier that will close the hearing on LB 731 and the proceedings this day.